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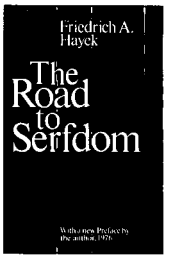

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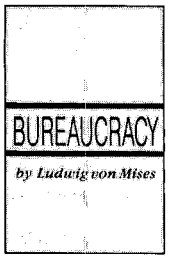

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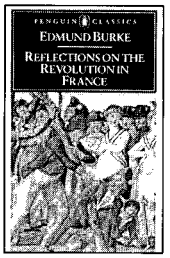

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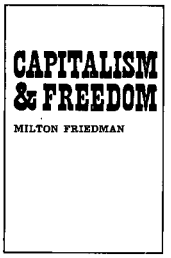

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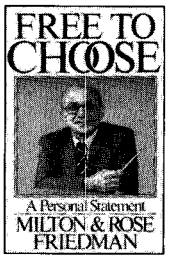

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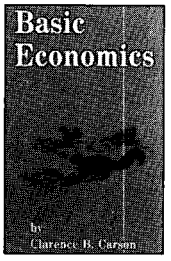

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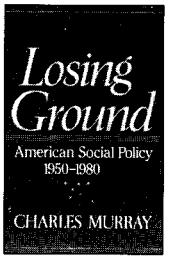

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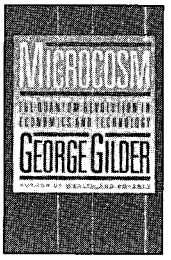

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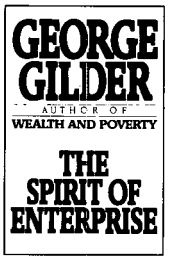

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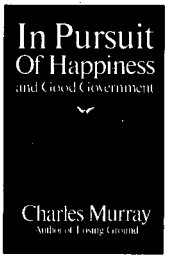

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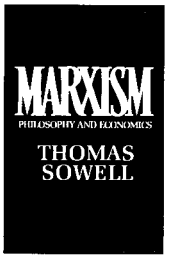

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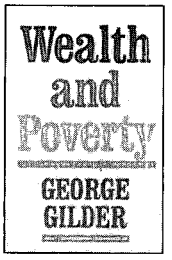

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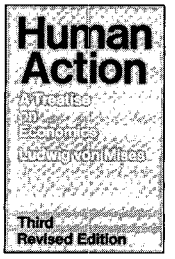

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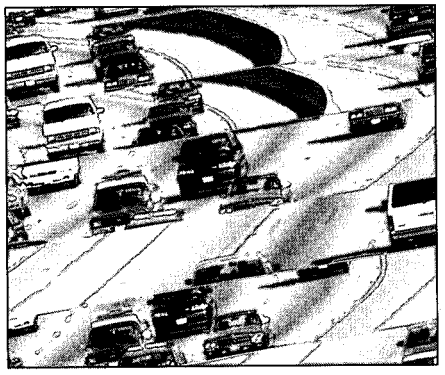

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UNMAKING MYTHS

VIRGINIA I. POSTREL

Francis Fukuyama says the Persian Gulf crisis doesn't prove we've returned to history, as he and Hegel define it. But when you're sending troops to the land of Mohammed to confront the ruler of Babylon, it looks like history to the rest of us.

This first encounter with post–Cold War history will do much to define the way Americans think about foreign policy—and about the role of open societies in a world filled with closed and violent ones—for decades. Already, we are seeing evidence that some cherished myths are less true than we once imagined.

Myth number one: "The open society is its own worst enemy. Democracies fail." This is the hardest myth to give up, the belief that the world's bullies really are big, tough, and inevitably victorious. We cherish our freedom and proclaim its superiority. But always there is that nagging doubt: When it comes to a struggle, won't we lose? After all, dictators can just do whatever they want—no Congress, no media, no polls, no demonstrations... Wouldn't it be better if we would all get with the program, all march in the same direction, all be more like Iraqis?

Well, no. Winning the Cold War ought to be Exhibit A in the case for self-esteem. It turns out that the messy individualism of free societies is more a strength than a weakness. Not only can they outproduce their autocratic adversaries, but over the long run they also do a better job at making policy. They can change their minds without executing anyone; all that happened to Jimmy Carter was an embarrassing electoral defeat. Our politics are as adaptable as our economies.

Consider the relative positions of Saddam Hussein and George Bush, and it becomes clear why it's easier for Bush to take a vacation. Neither Colin Powell nor Dan Quayle will try to seize power in his absence.

Then there's the question of advice. When some of his officers suggested that invading Kuwait might not be such a wise move, Saddam Hussein had them killed. Yet it seems inarguable that even Hussein's territorial ambitions would have been well served by counsel to stay cool and wait a few years.

By contrast, American presidents get plenty of advice—more than they often want. For the most part, they can count on the sincerity, if not the wisdom, of the advice givers. Even those with one eye on the polls and another on the TV cameras have, in some sense, the country's interests at heart. And the cacophony of views encouraged by a free press and a competitive politics means that most options, and most pitfalls, get discussed.

This process of advice and dissent makes some people nervous. They fear that talking too much about what the United States should do in the world makes it hard to act decisively. If the president is inclined toward indecision, that may be true. But not all advisers urge forbearance.

Nor is forbearance synonymous with indecision. Indeed, the deluge of punditry urging an immediate bombing attack on Iraq—in the foolish belief that we could just bomb Saddam back to the Bronze Age and go home—is driven by the fear that the American people will get restless and won't have the patience for a drawn-out confrontation.

This brings us to *myth number two: "America lacks staying power."* As *The New Republic*'s editors write, "These Arabs had to have been dismayed by the observation of the U.S. commander in the Gulf, General H. Norman Schwarzkopf, that 'there is not going to be any war unless the Iraqis attack.' If that is truly American policy, they fear, the Iraqis will simply time their next move until after the Americans get tired and go home. Once home, Hussein knows, G.I. Joe won't come back. And he will get tired....Better on all counts to have gotten this matter over with quickly—which is to say militarily, by strikes against Baghdad's infrastructure of mass terror."

The issue of staying power is at the heart of a lot of self-doubts. But the United States has had troops in Europe for *49 years,* first fighting a hellish war, then acting as a tripwire for global Armageddon. If that's not staying power, I don't know what is.

The truth is, Americans are awfully patient, especially when nobody's getting killed. (If anything, we're too patient; surely the Koreans can manage without us.) The United States is winner and world champ at fighting cold wars.

People like *TNR*'s editors are actually worried about hot wars. If we'd just drop some bombs, they seem to believe, we could get in and out before anybody realized how horrifying wars are. Aside from the naiveté of assuming that bombers can topple a government as easily as they can take out a nuclear power plant, this urge to fool the public is short-sighted.

The public finds out, if not from the media then from the body bags. And if you haven't been straight with people—about goals as well as tactics—you have a real problem. Support at home will wither, just as the pundits predict. And there is always the possibility that the troops *should* come home, that the country shouldn't stick with intervention merely to prove a point.

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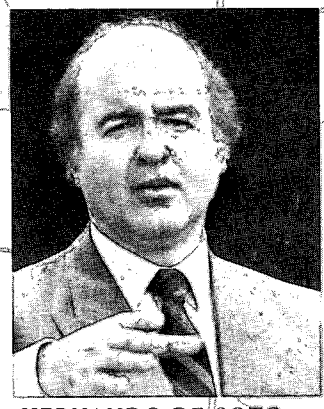

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Myth number three: "The press is the enemy." A corollary to myths one and two, this idea springs from the "living room war" experience of Vietnam. To a large degree, however, people were startled by Vietnam because they had been insulated from that ancient truth—that wars, even "good wars" fought by good men, are hell—and because nobody credibly explained what the point was. Having gone through the shock of rediscovery, people are now far more equipped to realistically assess the likely costs and potential benefits of military action.

Sam Donaldson may make a fool of himself in the Saudi desert, but the ability to reveal what's going on—and to make people who cover up look bad—works in favor of U.S. efforts, as long as those efforts in fact express Americans' values. Saddam's inept attempts to manipulate the media have backfired. Putting hostages on TV hasn't made people eager to capitulate; it's made them mad.

And Iraq's refusal to let reporters into Kuwait or to let journalists talk with hostages casts doubt on whatever its representatives say. For Iraq's ambassador to tell Ted Koppel that journalists will of course be welcome to visit Kuwait "in due time" is to confess to atrocities.

Back before Saddam Hussein was daily news, he gave Diane Sawyer a bizarre interview. In it, he kept insisting that, just as in Iraq, it's a crime for Americans to insult their president. Finally, Sawyer politely informed Hussein that people who insult the president of the United States not only don't go to jail, "they get their own television shows."

It may be exasperating for presidents to tolerate Sam Donaldson, but they have an advantage over the world's Husseins. They're harder to take by surprise.

GOING GREEN?

CHARLES OLIVER

Over the last decade, Republicans have ridden the issue of taxes to electoral victory. Ronald Reagan and George Bush won three consecutive landslide victories, in part by painting their Democratic opponents as tax-and-spend advocates of big government. At the state and local level, other Republican candidates have emulated this strategy with only slightly less success.

Meanwhile, Democrats have been searching for a similar issue that will win for them the hearts, minds, and, most important, votes of the American people. The nuclear freeze, competence, the deficit, protectionism—all have been used by Democratic candidates, with little success.

The latest entry in the "Issue that will Define the Democrats in the 1990s" sweepstakes is environmentalism. But it isn't clear that this issue will be much more useful than any of the others in putting Democrats in office.

In the '70s, inflation had pushed many middle-class taxpayers into high tax brackets, and the process showed no signs of slowing. Inflation was in the double digits by the end of the Carter presidency. Real people were suffering real harm. And the Republicans seized on the problem and offered a solution: cut taxes.

This solution imposed no costs on anyone, except possibly the government bureaucrats who found their annual budget increases cut. It was the perfect win-win electoral issue.

Further, making taxes the issue allowed Republicans to expand their constituency. When many blue-collar workers, small-business owners, and other traditionally Democratic voters found themselves pushed into high tax brackets, the Republican stand on taxes seemed more appealing than anything the Democrats had to offer. For the first time many Democratic households voted Republican.

By contrast, polls may show that Americans are very concerned about the environment, but it's hard to find any major bloc of voters who are actually suffering. By all objective measures, the environment is cleaner than it was 20 years ago. Death rates for most types of cancer are down. The Environmental Protection Agency reports that the air quality in most major cities is remarkably better. Our fresh water supply has recovered from the brink of destruction. And despite economic growth and population increases, America's consumption of petroleum has remained constant for the last decade.

In the absence of any real harm, it isn't clear that a nebulous emotional concern for the environment can be turned into votes for costly environmental measures. And these measures *will* be costly. For example, California's "Big Green," a catchall environmental initiative on the November ballot, will cost citizens of the Golden State $3 billion to $12 billion. That's about $1,000 to $4,000 a person.

And the proposition no longer appears headed for a landslide victory. In a *Los Angeles Times* poll taken in late August, California voters were split 44 percent to 42 percent in favor of Big Green. So much for tapping into voters' concerns.

The initiative's dwindling support illustrates the hazards of relying on environmentalism as the ticket to surefire electoral success. This is a divisive issue with plenty of losers—many of whom make up traditional Democratic constituencies.

Big Green, for example, bans a number of commonly used industrial chemicals and calls for sharp reductions in carbon dioxide emissions. These provisions would make industrial production much more costly and undoubtedly lead to manufacturing layoffs. If Republicans could make this connection clear, they could speed up the exodus of blue-collar workers from the Democratic Party.

Big Green also bans a number of common pesticides—a requirement popular with environmentalists but not with farmers. Dianne Feinstein, the Democratic candidate for governor, originally resisted

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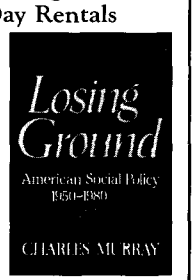

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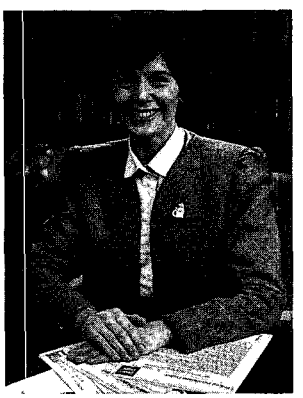

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EDITORIALS

backing Big Green and was doing well with California farmers. But after endorsing the measure under pressure from Democratic party activists, her popularity among farmers, says the *Los Angeles Times*, "appears to have withered."

Eliminating pesticides won't necessarily make the food Californians eat any safer (scientists estimate that our intake of natural carcinogens is 10,000 times greater than our intake of man-made carcinogens), but it will reduce the supply of food and push up prices. Some studies indicate that food prices in California could jump 30 percent because of Big Green. That's hardly going to attract the poor and lower-middle class to the measure or to the environmentalism it represents.

And since taxpayers still show no signs of supporting massive new tax increases, new environmental programs will inevitably vie with other programs for funding. Big Green mandates a minimum of $40 million a year in new state spending. That money will undoubtedly come at the expense of family services, health care, and other programs important to Democratic voters.

Sherry Bebitch Jeffe, an analyst at the Claremont Graduate School's Center for Politics and Policy, notes: "To the California that is largely white and affluent, Big Green means an improved quality of life. To the one that is largely minority and poor, 'quality of life' issues include surviving economically and staying alive....Among blacks, there appears to be some skepticism that Big Green is 'another Westside [of L.A.] liberal thing.' Said one black leader, 'The community feels kind of used and abused.' "

Still, many environmentalists continue to ignore or dismiss the economic impact of their proposals. Big Green supporter and UCLA professor Malcolm Gordon claimed at a September forum on the initiative, "The economics are irrelevant. It's how you *feel* about the issue."

But economics are very important to the backbone of the Democratic party—the working people of America. If the party starts basing its policies on the emotions of Hollywood celebrities and well-paid professors, it won't attract new voters. But it may well alienate some old ones.

REALITY CHECK

JACOB SULLUM

We can thank Saddam Hussein for one thing, at least: The prospect of a real war in the Persian Gulf has diverted attention from the drug war at home. One year after the release of William Bennett's *National Drug Control Strategy*, the *New York Times* reserved a space at the bottom of page 14 for its story about President Bush's progress report on the antidrug campaign.

It's been a success, by the way. "I think a prudent and cautious judgment on our present circumstances would be that the drug problem—in general, nationwide—is no longer getting worse," Bennett said at Bush's news conference. "In some very significant respects [it] is now getting better—not victory, but success." Senate Judiciary Committee Chairman Joseph Biden noted that casual drug use "appears to be plummeting" and praised the administration's efforts to promote that trend.

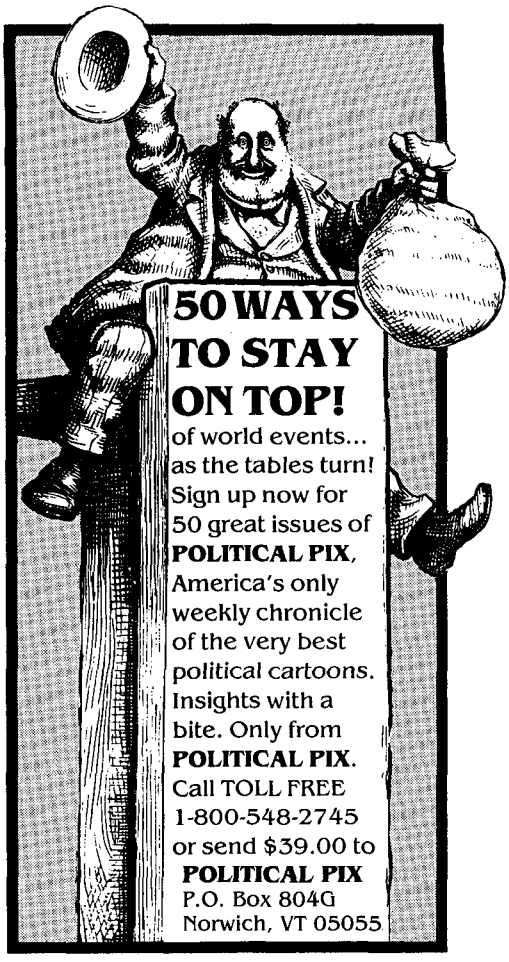
Yet the most-recent data on nationwide drug use come from a survey carried out in 1988, so it's a mystery how anyone can judge the impact of an antidrug campaign launched in 1989. Furthermore, drug use has been dropping since well before George Bush was elected; the household survey conducted by the National Institute on Drug Abuse has found a decline in overall use of marijuana since 1979 and of cocaine since 1982. In any case, unless the administration is prepared to accept blame for increases in drug use, it should not expect to receive credit for the continuation of trends that began a decade ago.

Bennett pointed to more-recent developments as well. Data from NIDA's Drug Abuse Warning Network indicate that the number of emergency-room patients who mentioned using cocaine (*not* necessarily those who suffered from cocaine-related problems) declined by 27 percent between the third quarter of 1989 and the first quarter of 1990. It's not clear what these figures mean. Furthermore, the DAWN sample is not random, so it's not even representative of U.S. emergency-room patients, let alone the general population.

Should Bennett come up with more convincing evidence of success, he may have difficulty finding an audience to impress with it. According to the *New York Times*/CBS News poll, the percentage of Americans who consider drugs the nation's number-one problem declined from 64 percent in September 1989 to 10 percent a year later. Analysts have reached a startling conclusion: If you bombard people with antidrug propaganda for a few months, they will tell you that drugs are a big problem. After a while, however, they will move on to other concerns.

Los Angeles Police Chief Daryl Gates is a little behind the curve. Testifying before the Senate Judiciary Committee on the first anniversary of Bush's baggie-of-crack speech, he called casual drug users traitors who "ought to be taken out and shot" for aiding the enemy in time of war. Although Bennett talks about beheading drug offenders only in theory (and even then, only dealers), Gates's statement—which he later repeated—is the logical conclusion to be drawn from the rhetoric of the drug warriors.

The police chief must have seemed especially out of touch to anyone who recalled a story that received wide publicity just a few days before his testimony. A 22-year-old tourist from Utah had been fatally stabbed on a New York City subway platform while trying to defend his mother against a gang of robbers. This is real crime, and citizens have a right to demand that law-enforcement officials devote their time and effort to fighting it, instead of waging phony wars against manufactured enemies.



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LETTERS

Courting Controversy

My compliments to Stephanie Gutmann for her excellent article on date rape ("It Sounds Like I Raped You!," Jul.). As a teacher of rape-prevention classes, I was most impressed with how well Ms. Gutmann's article addressed the confusion about this issue.

In my classes I emphasize assuming personal responsibility for avoiding or defeating violent assaults, and for acquiring the necessary awareness and skills to do so. But the current ideas about "date rape" greatly confuse the issue of personal responsibility. Many of these ideas invite women to cast themselves as passive victims—exactly the opposite attitude they need to have before they can effectively take care of themselves in genuinely threatening situations.

It is legally very dangerous to confuse coercion through the use or threat of violence or physical force with simple social or psychological pressure, no matter how intense. While it is appropriate to defend yourself with potentially deadly force against an assailant who is trying to physically force his way into your body, it is rather less appropriate to shoot someone who is whining at you to go to bed with him. (And rather foolish to try to reason with someone who is physically attacking you.) When we muddy the definition of rape, we make it much more difficult for the potential rape victim to recognize her own situation and respond appropriately.

Anthony M. Gregory
Indianapolis, IN

I WANT TO EXPRESS MY admiration for the courage and clarity with which Stephanie Gutmann considered the topic of date rape and its adverse implications for female independence.

Ms. Gutmann hints at, but does not specifically address, a terribly serious ramification: By using the concept of "date rape" to excuse personal passivity, women may become even more vulnerable to hard-core *assault* rape. Rapists deliberately choose their victims to subjugate them, and any woman who is taught to think that sexual ambivalence and lack of assertiveness is excusable may be a victim of preference for such predators. Being armed with a handgun can be a powerful deterrent to assault rape, as well as an effective instrument of defense and deliverance—but for a woman to go armed requires a degree of deliberation, clear thinking, self-knowledge, and assertive determination that the "date rape" habit of thought would make impossible to muster.

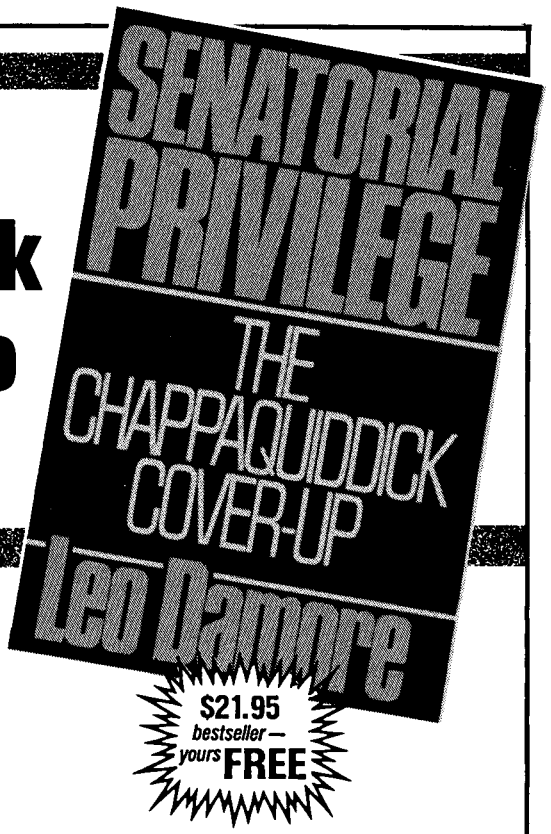
It would be too easy to misconstrue the issue; there is no question that any act of coercion is inexcusable, rape no less than any other violation. However, neither is there any excuse for the victim to find refuge in passivity.

Michael J. Dunn
Auburn, WA

STEPHANIE GUTMANN makes some good points about the blurring of distinctions between rape (a crime of violence) and caddish seduction. Yes, people concerned with rape prevention should stop devaluing the horror of real rape—and many acquaintance rapes are just that—and yes, women should stop playing "go away a little closer" games or accepting more alcohol than they can handle.

While most of what I read accords with what I saw when I was on the board of a rape crisis center, much more emphasis should have been placed on the *man's* role in situations where the woman is not clearly a willing participant. It goes without saying that only a foolish woman would go into a biker bar in a strange city on a Saturday

Despite a media brownout, this book fought its way onto the bestseller lists.



And when you read what it reveals about Teddy and Chappaquiddick, you'll see why.

Ray Kerrison explains it all in his *New York Post* column:

"The biggest surprise — and scandal — of the publishing season is the public's extraordinary demand for a book exposing Sen. Edward Kennedy's fatal escapade at Chappaquiddick, despite a review blackout by the nation's media giants.

This book is titled *Senatorial Privilege: The Chappaquiddick Cover-Up* (Regnery Gateway, $21.95). Written by Leo Damore, it made the *New York Times* non-fiction best-seller list yesterday for the eighth straight week.

Yet the . . . *Washington Post, Los Angeles Times, Boston Globe, Time* and *Newsweek* have all boycotted it.

The media blackout is all the more suspicious because Damore's account is a meticulous examination of what happened at the bridge and the aftermath. It was written with the cooperation of Joseph Gargan, a Kennedy cousin, who was involved in the nightmare. . . .

Damore's book leaves no doubt that: a) Kennedy left the party for a romantic interlude; b) he was drunk; c) he drove off the bridge at considerable speed; and d) his license had expired five months earlier.

It discloses how Ted Sorenson, President John F. Kennedy's speechwriter, drafted Sen. Kennedy's fictitious explanation of the tragedy for a national TV audience."

People Magazine shares the enthusiasm:

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night, alone and dressed in a miniskirt and high heels; only a foolish woman would fail to lock her front door at night. Why? Because there are bad people out there waiting for unwitting prey.

But her foolishness does not in any way excuse the behavior of a rapist or thief who tells his buddies "she was asking for it." Whether it's holding her down at knifepoint or "merely" pressuring her to get passed-out drunk, it's just plain *wrong* for a man to force himself on an unwilling woman or take advantage of her lack of smarts.

Women should take more responsibility for their actions—and so should men.

Lou Villadsen
Santa Monica, CA

ACCORDING TO YOUR ARTICLE on "date rape," there is a school of thought that holds that if a woman has consented to sex only after having been begged, cajoled, whined at, etc., she has in fact been raped.

In the movie scene from *She's Gotta Have It*, used in Columbia University's date-rape education program, the male character has sex with the female only after she begs and pleads with him to come to see her and, once there, after she makes physical contact with him and "pleads with him to make love to her."

Using the logic in the first paragraph of this letter, has *he* not been raped?

Randall Morris
Wheaton, IL

STEPHANIE GUTMANN'S ARTICLE itself trivializes sexual violence by focusing exclusively on the blurring of the definition of rape—as though that were the entire story and real date rape a contrived problem.

Ms. Gutmann informs us that people staffing women's centers and similar institutions tend to assume that most acquaintance rapes go unreported and that these staffers further believe that reporting, since it challenges the system, should be encouraged. From this Ms. Gutmann concludes that "increasing the number of reports is thus an end in itself." This she seems to find objectionable.

Education on date rape (properly defined) is a good thing—both men and women should be clear on what consent is. That there is confusion on this issue does not mean that there is no problem.

It is appropriate to assume that women know the difference between *yes* and *no* and between *stop* and *go*. It is also reasonable to expect that men have the intelligence to understand these concepts. However, in the present cultural context, where some males assume that *no* could mean *yes*, it is important that women clarify the issue. To be able to do this, some women may need assertiveness training.

Undesired sexual advances require a positive and unequivocal stop message. If this does not produce results, the woman must inform the presuming "lover" in no uncertain terms that she will file rape charges if he persists. If the attack continues she needs to inflict sufficient pain and injury to the rapist that all doubt that this might be a love act is removed. Therefore, every woman should have self-defense training. A woman will have a difficult time convincing each of 12 jurors, beyond a reasonable doubt, that it was rape if neither she nor her assailant have a scratch or a bruise on them.

Awareness is first. Prevention is second. Restitution, retribution, and punishment is a distant and highly uncertain and unsatisfying third.

Ernst F. Ghermann
Winnetka, CA

THE ARTICLE ON DATE RAPE is shockingly at odds with the libertarian ideals your magazine represents. First, Gutmann assumes that a sexual encounter cannot be called rape unless the victim resists. Remember that rape is *nonconsenting* sex. A woman's failure to resist sexual assault (whether this failure is motivated by fear, or by confusion at the fact that the assailant is someone she cares for, or both) does not make it any the less rape.

Suppose I approach a confirmed pacifist, one who has vowed never to defend himself or his property by force. I ask him to give me his hat; he refuses; so I simply take his hat and walk off with it, while he sadly but calmly stands there. I have not threatened him in any way (nor, incidentally, has he resisted); however, I have clearly stolen his hat. It is not the threat of violence, but his lack of consent, that makes my action a theft.

Gutmann claims that if—as is often the case in date rape—a woman doesn't realize that she's been raped, and has to be convinced of it after the fact, she can't really have been raped. If Gutmann is right, then libertarianism is all wrong, since it's also true that most conscripts don't think of themselves as slaves, nor do most taxpayers think of themselves as victims of theft. The evil of socially legitimized coercion is that it so insidiously masks its true nature that even its victims do not recognize it for what it is. The "date rape education" seminars awaken the oppressed to the fact of their oppression.

Finally, Gutmann argues that it's demeaning to women to portray them as perpetual victims. I agree. But it's equally unhelpful to ignore the psychological conditioning that women in our society receive, conditioning that makes it easier for men to victimize them. In paying women the supposed compliment of regarding them as already liberated from this conditioning, Gutmann merely whitewashes the problem instead of offering a solution to it. In alleging women's complicity in date rape, Gutmann is simply perpetuating the myth that women are "asking for it"—thus helping to reinforce the psychological environment that leads to date rape in the first place.

Roderick T. Long
Ithaca, NY

STEPHANIE GUTMANN drastically misrepresents the ideology, purpose, and methods of the Swarthmore College Acquaintance Sexual Assault Prevention workshops. The sentence that she quoted was from an old training manual that is no longer used and was quoted out of context, so as to suggest that our group includes inappropriate comments in the

definition of the term *rape*. We view rape, as traditionally and legally defined, as the extreme end of a spectrum of situations in which a person is violated. Because of its narrow definition, we minimize our use of the word *rape* in our workshops and instead use "sexual assault" and "violation."

Ms. Gutmann argues that we encourage women to view themselves as "entirely passive, a hapless victim, there by accident." This is far from true. Our goal is to help women and men believe strongly enough in their right to refuse sex that they do refuse authoritatively, rather than tolerating the behavior of someone who ignores polite protests.

There is a crucial distinction to be made here. We are attempting to remove the social and emotional obstacles that may prevent women and men from doing all they can to prevent violation of their bodies. Recognizing the effect of these obstacles in no way transfers the blame for the incident to the victim. *The moral responsibility for the prevention of rape lies with the aggressor.*

Ms. Gutmann correctly says that in many cases of acquaintance rape, "more assertiveness on the woman's part could make a crucial difference." But failing to assert oneself is not a crime; using another person's body for sex without that person's consent is. In a civilized world—the one most women assume they inhabit—verbal refusal is enough. The woman who says "c'mon...no" has denied her consent. Ms. Gutmann's implication that she must prove her unwillingness with screams is as backward as the formerly popular view that a woman did not fight back enough and thus was not truly raped unless she was covered with bruises.

Ms. Gutmann suggests that our sexual-assault prevention efforts are really an attempt "to put some limits back on sexual behavior....It's more acceptable to say that men are monsters...than to say 'I don't feel like it right now.' " This view assumes that women are incapable of making decisions about sexual behavior. Given the belief that their right to say no is absolute, which we try to help them come to, women are perfectly capable of

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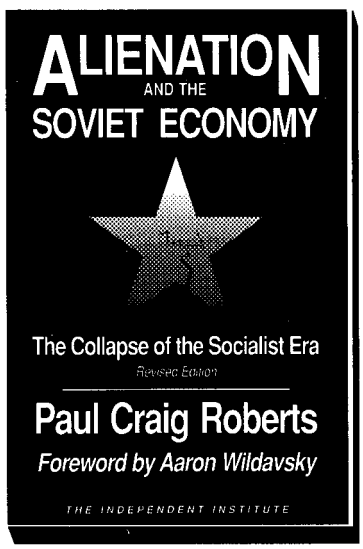

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LETTERS

saying "I don't feel like it." What is needed are not external controls on sexual behavior, but men who respect that "no" when it is said.

Ms. Gutmann concludes that the result of campus education on acquaintance rape is that "bad or confused feelings after sex become someone else's fault." Not categorically. Bad or confused feelings can result from a mistake—a situation in which someone made a choice she wishes she hadn't. But when these feelings are the result not of her choice but of someone else's choice imposed on her, then they are most emphatically not her fault.

Ms. Gutmann asks, "If you have to convince a woman that she has been raped, how meaningful is that conclusion?" Women whose concept of rape is limited to strangers in dark alleys frequently will not call it rape when they are forced to have sex by an acquaintance or boyfriend. We aim to expand students' concept of sexual assault to include victimization by nonstrangers. We want the student to recognize that she has the right to choose whether to engage in sexual activity, the right to refuse, and the right to have her refusal respected. Believing in her right to choose is the most meaningful conclusion a rape survivor can come to, because it allows her to own her own body.

Jessica McGrew
Melissa Emrey-Arras
Acquaintance Sexual Assault Prevention Workshops
Swarthmore, PA

Ms. Gutmann replies: I obtained the Swarthmore College training manual from a University of Chicago Health Service counselor who was studying the date-rape literature. Whether or not it is still in use, the passage I quoted accurately reflects the fuzziness of the definitions employed by date-rape educators.

Mr. Ghermann, Mr. Long, Ms. McGrew, and Ms. Emrey-Arras are correct that consent is the crucial issue in defining rape. The problem is determining when consent has been given. In this respect, the distinction between rape and voluntary sexual intercourse is more subtle than the difference between borrowing and stealing a hat. Generally speaking, social convention dictates that we explicitly ask for permission before using someone else's property. In the case of sex, permission is granted through a range of verbal and nonverbal cues; the would-be lover who asks, "So, you want to have sex, or what?" is a crass oddity.

In the absence of evidence to the contrary, it is therefore reasonable to assume that a woman who engages in sex without protest does so willingly. If she does not really want to have sex, but keeps this information to herself, her partner can hardly be held culpable. Clear communication is a responsibility shared by men and women. To say that the responsibility is ultimately the man's, since he is an aggressor, begs the question. He is an aggressor only if the woman has withheld consent.

The problem of communication is complicated by the inherent ambiguity and traditional doublespeak of many sexual situations. Nevertheless, it is possible for a woman to make clear her lack of consent without actually kicking a fellow in the groin or scratching his face. By definition, a woman who has communicated this message engages in sex only because she has been coerced through the use or threat of physical force. That is rape.

The overarching concern of my article, which critics of the piece do not seem to understand, was well expressed by *U.S. News & World Report* writer John Leo in a column on sexual harrassment codes: "Driven by feminist ideology, we have constantly extended the definition of what constitutes illicit male behavior." Given the publicity about AIDS and the constant drumbeat over sexism, passionate, trusting relationships between the sexes are fragile these days. It is not helpful for anybody—but particularly for young people—to discuss sexual relationships in a manner which seems to tell men that they are instinctively rapists, that rape is an easy crime to fall into, and that courtship is a minefield of criminal possibilities. The courtship dance is by its nature difficult and hesitant; let's not scare everyone off the dance floor.

Out of Control

One is always reluctant to correct factual errors in well-written articles like Rick Henderson's "Oceanfront Battleground" (Jul.). The fear is that the author will feel unappreciated, which in this case is certainly not true.

When Santa Monica's rent control was enacted, it rolled back rents by 16 months after a four-month freeze— not by a fixed percentage. As a result of this act, plus inadequate annual adjustments, rents now lag behind the local Consumer Price Index by an incredible 48.5 percent!

According to the 1980 census, a little more than 70 percent of this city's residents were renters, not the 80 percent widely reported by the media. That figure, however, was more than enough to permit the legalized plunder of the 9 percent who are rental-housing providers.

The incentive housing plan devised by Rent Commissioner Wayne Bauer did not offer rent increases on two-thirds of vacancies in return for the other third going to low-income renters. The plan is one-for-one. Buildings of 12 units or less could eventually go to half and half—if the owners live long enough. Buildings larger than 12 units are limited to one-third incentive, one-third low-income, and one-third unchanged.

Mr. Henderson should not be faulted for incorporating these flawed statistics, since Santa Monica is awash in plans, rumors, and manipulated figures. Overall, the substance of his article was outstanding, not to mention very welcome.

James W. Baker
President
Apartment Assn. of Greater Los Angeles
Santa Monica, CA

AS A SANTA MONICA landlord, I found "Oceanfront Battleground" familiar and frustrating. Familiar inasmuch as dire predictions about the imminent demise of Santa Monica's rent control have circulated since 1979; frustrating because there are few things quite as frustrating as having legal title to property (and its corresponding responsibilities) while feeling effectively expropriated by the welfare statists who initiated rent control in the city and now run it.

There are a few twists in the story of Santa Monicans for Renter's Rights that make it a peculiarly American/Hollywood one. First of all, it is a classic illustration of political radicals co-opting a self-interested populist sentiment to achieve "higher" goals. The leaders of SMRR have been very clear about their long-range aim: a cradle-to-grave welfare state. It could not help but be so, since SMRR was started, so the common wisdom holds, with Jane Fonda's money to support Tom Hayden's ambitions.

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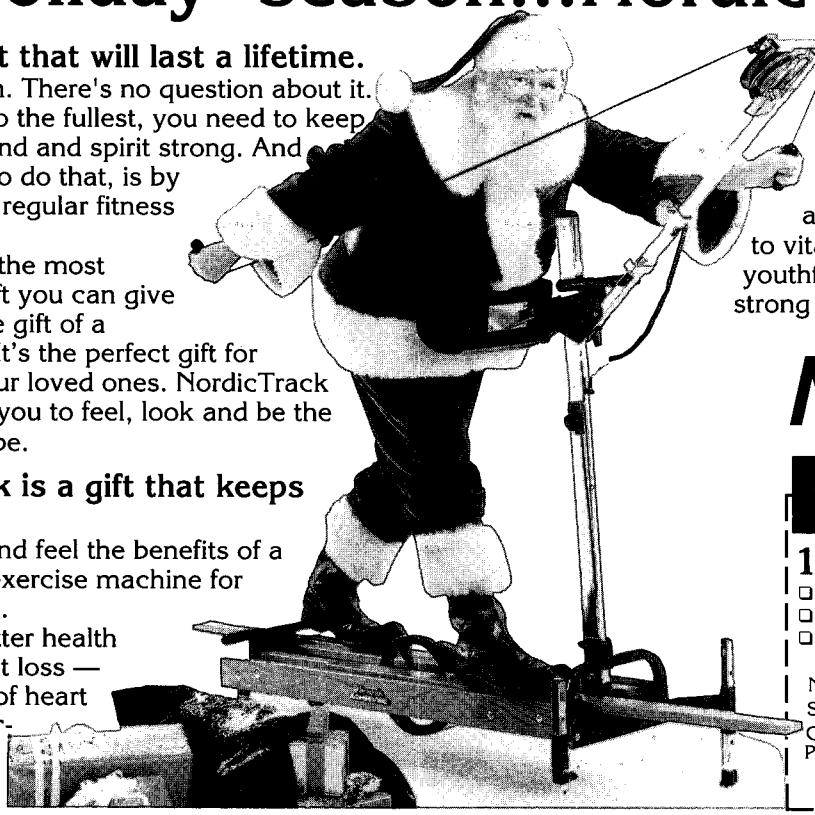

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LETTERS

But the voters who supported SMRR, as Mr. Henderson points out, were strictly voting their self-interest. During the double-digit inflation of the mid- to late-'70s and that first period of astonishing appreciation of Southern California property, renters found themselves in buildings sold once or twice a year, with corresponding rent increases by the new owners to meet newer, bigger, higher mortgages.

Likewise, the marginal properties and single-family homes in a main residential quarter were coming down at an incredible rate. At one time in 1979, I counted in a 30-square-block area nearly 100 condominium projects. Tenants, and not a few homeowners, saw in rent control, and the development restrictions proposed along with it, a way to protect their interests.

But all this occurred because property owners had acquiesced to ever-more-restrictive zoning and building codes. Between the city codes, the zoning laws, and the additional burdens placed on much of the city by the California Coastal Commission (ostensibly mandated to "protect" the beaches, but in fact to protect the self-interest of the handful of people who got to the Pacific first), density in much of Santa Monica has "progressively" decreased while building costs have consistently increased. Property owners acquiesced, indeed supported, the government regulations that made the commodity they held rarer and dearer.

Given the three factors of increasingly restrictive building and zoning laws, perilous economic times, and an all-too-happy-to-be-convinced plurality of tenant voters, the scions of the '60s student movement that made up Hayden's political machine were able to take control of the city through rent control.

What is most odd about this group, however, has been its tenacious hold on transparent contradictions. In one breath, the most radical elements of SMRR demand that the state, the feds, and private property owners build low-income housing, and at the same time, they attack their own comrades in the city council for not downzoning more areas more quickly.

In its desperation to hold onto both political power and ideological purity, the SMRR has begun to splinter. The main stumbling point between the different factions is how explicit to make their social-engineering program. The more pragmatic members realize that the populist-inclined electorate really doesn't share these redistributive principles except where they get their own free lunch. The more dogmatic members don't quite understand that the ideology has run its course.

It's unlikely that rent control will be greatly modified, landlord initiatives notwithstanding. People know their self-interest; multimillion-dollar bureaucracies can protect themselves; and nothing short of a Chicago fire will allow enough housing to be built here to meet the demand. City regulations, city extortion of phenomenal fees for the right to remove old housing to build new housing (something like $64,000 per unit to take an apartment off the market), and a sophisticated opposition to any development guarantee a decreasing supply relative to a burgeoning demand. All in the name of keeping housing affordable.

Landlords who aren't building like strict zoning, because they know it will make their existing property more valuable in the long run. Meanwhile, developers pay incredible fees and are required to build as many parking spaces as bedrooms. Then they're attacked for not building low- and moderate-income housing.

Yet the television people keep moving here, if they can find a place, and they in turn try to convince us that all the ills of the world would be cured if we just got rid of real estate developers and if we were more environmentally sensitive. Maybe they'll buy an apartment building and learn a little bit about the realities of economic life. Or, if they get rich enough, make like Ted Turner, and date Jane and Tom together.

Dennis A. Gura
Santa Monica, CA

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To Catch a Cab

Robert Lynch's efforts to get a cab of his own may finally mean relief for the millions of Boston visitors stranded in long lines at the airport and in front of hotels every year.

A 13-year veteran of the city's streets, Lynch decided a few years ago that he no longer wanted to drive other people's cars. (Translating those long lines into dollar signs and overhearing dispatchers turn down cab requests may have helped him reach that decision.)

He went to the Boston police to obtain an owner's medallion, but they refused to give him one. So he did some legal research to find out why. He learned that a 1934 state law placed a ceiling on the number of medallions in the city at 1,525.

Lynch appealed to the state Department of Public Utilities (DPU). The city supported him, citing discontent among hotel and restaurant owners and convention organizers, and asked that 300 new medallions be issued. (Between 1983 and 1988, the number of visitors to Boston increased 31 percent, and 7,000 new hotel rooms were added.) In addition, elderly persons—many of whom rely on taxis as their only source of transportation—complained that cabs were harder to get. And poor residents claimed cabs no longer came to their neighborhoods.

"Any direction you looked, you would see there was a strong demand for taxicabs," says Lynch. "When you looked out onto the street, you'd see people waiting in line."

The demand on cabs has more than doubled the market value of a medallion in the last 10 years. Lynch says he originally tried to purchase a medallion from a broker but was unable to meet the price, now $100,000 or more. Those prices have kept a lot of drivers like Lynch out of the market, which has increasingly come under the control of large fleet operators.

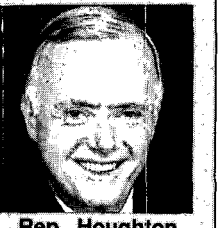
The taxi owners' associations vehemently opposed Lynch's—and the city's—attempt to increase the number of medallions. They claimed problems had been overstated and that limited accessibility of taxis was due to traffic congestion and a shortage of drivers.

Despite the opposition, the DPU in March ordered the immediate release of 300 new medallions and an additional 200 over the next two and a half years. Two cab organizations, the Boston Neighborhood Taxi Association and the City of Boston Cab Association, are appealing the decision to the Massachusetts Supreme Judicial Court.

The state attorney general, the city, and Lynch (who is represented by New England Legal Foundation) are all fighting the cab owners' appeal. Capt. Donald L. Devine, commander of Boston's hackney carriage unit, says there is little chance the courts will overturn the DPU decision. Good news for those of us planning to pay a visit to the city soon.

—Prabhat Mehta

Robber Barons



Rep. Houghton

Want to elect a legislator who is devoted to the free market? Don't elect someone wealthy. Each year the Competitive Enterprise Institute rates members of Congress on their commitment to free enterprise as reflected in votes on federal taxes, spending, and regulation. REASON looked at the scores of the 10 richest members of the House of Representatives, as estimated by *Roll Call*, and found that their scores were noticeably lower than those of their less affluent brethren. The average House score was 38, but the average for the 10 richest legislators was 24.

Representative	Personal Worth	CEI Rating
Amory Houghton (R-N.Y.)	$100 million	50
Norm Sisiskey (D-Va.)	30 million	25
Bill Green (R-N.Y.)	8 million	42
Nancy Pelosi (D-Calif.)	7.5 million	8
Sid Yates (D-Ill.)	7.1 million	14
Pete Stark (D-Calif.)	5.2 million	13
John Spratt (D-S.C.)	5.1 million	24
Owen Pickett (D-Va.)	4.2 million	33
Glenn Anderson (D-Calif.)	4 million	15
J.J. Pickle (D-Tex.)	3.6 million	15

Boozing Battle

An initiative on the November ballot in California would raise the state tax on liquor by 65 percent, on beer by 400 percent, and on wine by 1,900 percent. The alcoholic beverage industry is not standing idly by—it's actively supporting the measure.

That's because those dramatic increases pale in comparison with the tax hikes proposed by the competing "nickel-a-drink" initiative, which would raise the per-gallon tax on liquor from $2.00 to $8.40, on beer from 4 cents to 57.5 cents, and on wine from 1 cent to $1.29 (increases of 420 percent, 1,338 percent, and 12,800 percent, respectively). Known formally as the Alcohol Tax Act of 1990, this initiative would take an estimated $720 million each year from consumers of alcoholic beverages to fund mental health services, drug- and alcohol-related law enforcement, alcohol treatment, alcohol-abuse prevention programs, and emergency services.

The industry is expected to spend some $20 million to defeat the measure. Distillers, brewers, and vintners nationwide are contributing to the effort to siphon off support from the Alcohol Tax Act. They're concerned both because of the size of the California market and because of the state's reputation as a trendsetter.

But unlike California's insurers in 1988, who pumped all their money and effort into a no-fault alternative to Proposition 103, the alcohol industry is hedging its bet. Many of the same contributors who are supporting the milder alcohol-tax initiative are also backing a tax-limitation proposal by Joel Fox of the Howard Jarvis Taxpayer Association.

The Fox measure would require a two-thirds vote, rather than a simple majority, to approve any initiative imposing special taxes for designated purposes. It would also limit such levies to 1 percent of the value of the taxed property, a condition that disqualifies the Alcohol Tax Act. If passed, the antitax measure would go into effect the day of the election, scuttling the nickel-a-drink initiative as well as two other tax hikes intended to fund antidrug efforts.

Fox hopes the November 6 election will show that last June's approval of Proposition 111, which doubled the gas tax to fund road construction and maintenance, was an aberration. Unlike the gas tax, he says, "the alcohol tax is certainly not a user fee." While everybody who buys gasoline uses public roads, few of those who enjoy a glass of white zinfandel end up in a drug treatment center or an emergency room.

—Jacob Sullum

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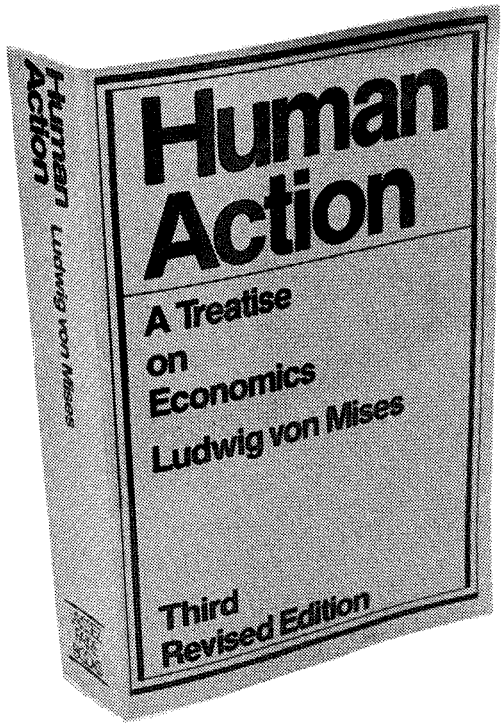

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BALANCE SHEET

Assets

Choice Chance. A Wisconsin court upholds Milwaukee's school-voucher program. (See "Champion of Choice," Oct.) At least 1,000 poor children can get a real education. And in Oregon, the Educational Choice Initiative qualifies for the November ballot. (See Trends, Jul.) The other NEA heads for cover. About time.

Uncowed. To counter antibiotech hysteria, the Food and Drug Administration comments favorably on a substance still under review. BST, the bovine growth hormone, is safe for humans and cattle. The *Journal of the American Medical Association*, supporting the FDA's unprecedented move, lambastes biotech opponents who "play on the health and safety fears of the public to further their own ends." Take that, Jeremy Rifkin.

Colorful Language. Rep. Pete Stark (D-Calif.) calls Health and Human Services Secretary Louis Sullivan "a disgrace to his race" because Sullivan opposes national health insurance. Sullivan angrily informs a gathering of black journalists: "I am not a 'good Negro.'...This is a time for independent thinking for blacks and for all minorities." ABC's Brit Hume reports Stark once tried to join the Congressional Black Caucus; he probably shouldn't reapply.

Bash Brothers. Chrysler ads shamelessly bash the Japanese. But the company's business operations are much less xenophobic: It will equip a Chrysler-Mitsubishi assembly plant in Illinois with Japanese metal presses that could have been bought from American manufacturers. A Chrysler spokesman tells the *New York Times*: "We prefer to buy American, but we're not afraid to buy the equipment we need to do the job." Are you listening, Dick Gephardt?

Liabilities

Unpaid Dividend. Saudi Arabia may be the next South Korea. Whether diplomats or cruise missiles solve the near-term crisis, once Saddam goes bye-bye, a non-Arab military presence will be expected to maintain stability in the region. Europe and Japan ought to pick up most of the tab. Odds are they won't.

Tainted Saint. Some of Nelson Mandela's luster wears off. As he (and the venerable ANC) refuses to renounce violence, Xhosas and Zulus slaughter one another. A dumbfounded Western press blames Chief Buthelezi's Inkatha because they "accommodate" apartheid. President de Klerk and Mandela alone won't dismantle the system; they must invite the Zulus and others to the table.

War Correspondence. A California drug-policy panel calls for the legalization of marijuana and decriminalization of other drugs, but Atty. Gen. John Van de Kamp (not even a candidate this fall) blocks publication of the panel's annual report. An official in Van de Kamp's office says the panel shouldn't make recommendations to the legislature. One panelist will use his own money to publish the comments.

Fuel Gouge. Who's hated more: Saddam Hussein or Exxon? Listen up, folks: OPEC nearly doubled oil prices the week before Iraq invaded Kuwait. President Bush wisely left strategic reserves untapped. Gas prices rose to reflect replacement costs and uncertainty. Counting inflation, crude oil and gasoline are half their late-'70s price. Thickheaded pundits forget that we've had an energy policy all along: It's called deregulation. Supply and demand have relegated gas lines to the history books.

—Rick Henderson

How Sweet a Deal?

Do drug dealers sell drugs because they can't get real work? Would jobs programs reduce the lure of drug dealing?

A Rand Corp. research team led by economist Peter Reuter studied drug dealers in Washington, D.C., and concluded that not only are most dealers gainfully employed but their drug earnings are less than most people believe.

Rand researchers questioned 186 men convicted of possessing or selling drugs in the District of Columbia and currently on probation. Sixty-four percent were working at the time of the interview, earning, on average, $7.00 an hour. (Sixty percent were employed full time.) Another 11 percent were either in school or job-training courses. Of the dealers who were unemployed, 95 percent had had legitimate jobs in the past. Only 11 percent admitted receiving government benefits, including welfare, food stamps, and Social Security.

Those surveyed had a median drug-dealing income of $2,000 a month or about $30 a hour, four times as much as they made in legitimate employment. Those who made more, notes the report, tended to have "entrepreneurship and general hustle in legitimate work and nondrug crime."

Though a $30-an-hour wage seems high, most dealers sold drugs only part time because of the risks. On average, 200 drug-related murders occur in Washington, D.C., each year, exposing a drug dealer to a 1.4-percent chance of being killed. (By contrast, each year the average Washington, D.C., policeman faces a 1-in-1,000 chance of being murdered.)

Because most drug dealers already have jobs, the authors contend, "job creation, even of relatively high-paying jobs, may do little to reduce willingness to participate in drug markets." Instead of jobs programs, the Rand researchers suggest that further study of how "young, urban minority males with poor earnings prospects" judge risks might well provide the information needed to reduce the attractiveness of the illicit drug trade.

—Martin Morse Wooster

BRICKBATS

Russ Meyer, the king of cleavage cinema, and his traveling companion Melissa Mounds (58-21-32) were the highlight of this summer's Moscow Film Festival. Meyer drew cheers from Soviet filmmakers when he said, "My films out-and-out appeal to the prurient interest. I'm in the film business for lust and profit....The success of any film is how many asses you can get to cover the seats in the theater." And Muscovites packed the theaters showing Meyer's films *Beyond the Valley of the Dolls*, *Mudhoney*, and *Supervixens*. How're you gonna keep 'em down on the collective after they've seen big American breasts?

When George Bush went to a fundraising dinner for Sen. Jesse Helms (R-N.C.) he had an unusual request: He wanted his favorite wrestler, Charlotte native and then-world champion Ric Flair, seated at his table. Flair, who is considered the greatest wrestler of all time, and Bush, who may be the greatest U.S. president of the early 1990s, got along famously.

Speaking of Bush, the president was criticized for going easy on Chinese leaders after the Beijing massacre. But Bush's strategy of appeasement appears to have paid off. China recently enacted a reform similar to one that Bush wanted for the United States. It is now illegal to burn the Chinese flag.

Time-out for a Brickbats quiz. On a report on the "Today" show, NBC's Carl Stern summed up the judicial record of Supreme Court nominee David Souter: "As a bachelor, he showed spare concern for women's rights, taking a sometimes dim view of rape complaints." (Souter once voted to overturn a law prohibiting defense attorneys in rape trials from bringing up the sexual history of the alleged victim.) Does Stern's statement reflect his: a) antibachelor prejudice, b) law-and-order leanings, or c) left-wing desperation?

CLEARLY, THE COMMITTEE WILL WANT TO KNOW IF THE JUDGE SEEKS THE ORIGINAL INTENT OF THE CONSTITUTION OR IF HE SEES IT AS A LIVING, BREATHING DOCUMENT OPEN TO MODERN INTERPRETATION.
YOU FOR ABORTION OR AGAINST IT, JUDGE?
TRANSLATOR
BOK ©90
AKRON BEACON JOURNAL

Lest anyone doubt the antiscience nature of the environmental movement, observe the commercial for "Big Green," a 39-page catchall environmental initiative on the November ballot in California. Without ever trying to disprove the scientific claims that the air is cleaner, that most cancer rates are falling, or that pesticides on our food aren't much of a problem, actor Michael Landon proclaims, "We've listened to the experts. Now it's time to tell the experts what we believe." Yeah! Who knows more about toxins and stuff, a bunch of pointy-eggheads or Little Joe?

And California isn't the only state infested with these eco-pests. Mark Herndon, drummer for the country-music group Alabama, showed up at a public hearing to oppose a new landfill in Chattoogaville, Georgia. To demonstrate the depth of his knowledge of toxicity, aquifers, and other important-sounding things, Herndon forced those at the hearing to watch the video for Alabama's song "Pass It on Down."

Meanwhile, eco-activists in Australia have targeted the birth-control pill as an enemy of the earth or, at least, of fish. Supposedly, estrogen from the pills somehow winds up in Australia's coastal waters. The hormone renders fish swimming in the water sterile. How long will it be before Messrs. Landon and Herndon show up in Sydney to demand a ban on estrogen?

And the city parents of Santa Monica, California, showed their lack of concern for the environment by threatening to fine Edwin Ek for using a sidewalk trash can. Ek didn't know that city ordinances forbid putting private waste into public trash cans, so he tossed some junk mail into a can one day on his way to the bus stop. The letters were later spotted by the crack investigative unit of the sanitation department who sent photocopies of the evidence and a letter warning of future fines to Ek. Now what happens if he throws the letter from the city into the trash?

—Charles Oliver

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"The Vietnam War" by Jacob G. Hornberger

"Foreign Policy and Foreign Wars"
by Richard M. Ebeling

"Conscription" by Daniel Webster

"**THE VIETNAM WAR TORE THIS NATION APART.** Those who supported the war were accused of being warmongers. Those who resisted the war were accused of being unpatriotic. Who were the patriots and who were the traitors? The American people who supported the war, and the American people who resisted the war, were the patriots. So who were the traitors? The traitors were the American politicians and bureaucrats who waged the war."

Jacob G. Hornberger, Founder and President, Future of Freedom Foundation,
NOVEMBER 1990 *FREEDOM DAILY*

"**THE GLOBAL SOCIAL ENGINEERS IN WASHINGTON ARE BUSY SCRAMBLING** for some way to maintain Washington's political control over international affairs and guarantee that America will remain "in harm's way," potentially drawn into numerous conflicts around the world. But to follow the path of attempting to set the world straight can lead to nothing but perpetual intervention and war in the name of world peace and global welfare."

Richard M. Ebeling, Ludwig von Mises Professor of Economics, Hillsdale College,
and Academic Vice-President, Future of Freedom Foundation
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"**IF, WHILE READY TO OBEY EVERY RIGHTFUL COMMAND OF GOVERNMENT,** he is forced from home against right, not to contend for the defense of his country, but to prosecute a miserable and detestable project of invasion, and in that strife he fall, 'tis murder. It may stalk above the cognizance of human law, but in the sight of Heaven it is murder. . . . May God, in his compassion, shield me from any participation in the enormity of this guilt."

Daniel Webster (1782-1852) American statesman
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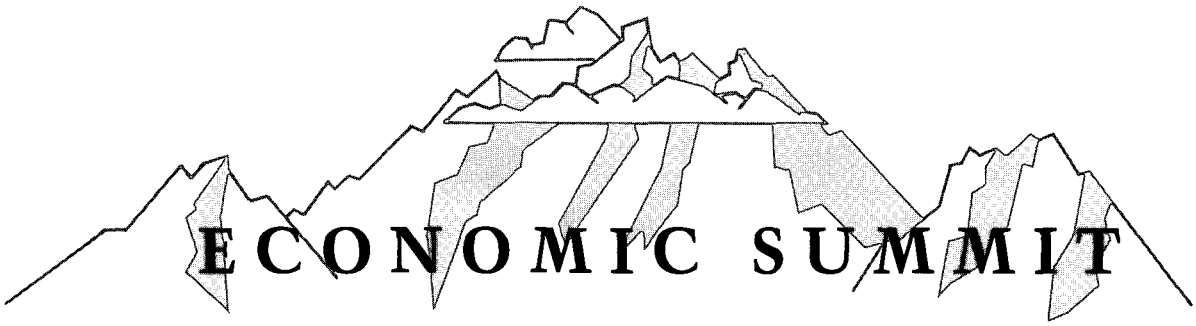

TAKING THE NEXT HILL

How to Regain the Initiative

BY DANIEL J. MITCHELL

Supporters of freedom in the United States are on the defensive. Instead of pushing our own progrowth agenda, we must battle tax increases and resist new regulations. On issues from the environment to child care, from health care to antitrust, statists set the agenda.

Unfortunately, regaining the initiative is easier said than done. The fate of free-market policies and goals seems inextricably linked with the Republican party. When an aggressive, market-oriented Republican is in the White House, or when Republicans are an active opposition party as they were during the Carter years, supporters of limited government can work through the party to advance our goals. But when a passive Republican such as George Bush controls the White House, the free-market movement gets relegated to fringe status.

Still, libertarians and conservatives must launch a new offensive against the state. But we can't do this if we allow ourselves to be seduced by Washington policymaking and support deals that simply result in the government growing a little more slowly than the liberals want. If we must oppose both President Bush and Congress, so be it. In the immediate future, this strategy may diminish whatever limited influence free-market supporters have on the current administration. In the long run, however, a principled defense of the truth will resuscitate the movement and force politicians to heed our ideas.

If we want to fight big government, we must remind people that government is the problem, not the solution. The free-market community's strength has always been the support of ordinary Americans. The potential outrage of overtaxed and overregulated Americans is our check on the legalized theft that takes place in Washington.

Various free-market groups, for instance, have uncovered the utter waste and special-interest nature of federal farm subsidies. Without sufficient public outrage, however, Congress continues to funnel tax dollars to farmers. If we want to have an effect, we must go to the grass roots, get people upset that they pay higher taxes and higher food prices because of the farm programs, and target their anger against Congress. On another front, federal subsidies for pornographic art have incensed many taxpayers; we need to direct that anger against federal funding of art in general.

Many foreign-aid expenditures were justified as a means to keep Third World countries from falling into the Soviet orbit. With the collapse of communism, we have an excellent opportunity to renew an offensive against these odious transfers of wealth from American taxpayers to corrupt government officials overseas. On an issue dominating headlines recently, free-market supporters should explain the savings-and-loan scandal as the logical culmination of government intervention and deposit insurance.

But if George Bush has made a principled criticism of a single government program, it has not been reported. On farm subsidies, he tinkers at the edges, avoids confrontation, and puts off action in the hope that international trade negotiations will someday solve the problem. On federal funding for the arts, he has actually proposed budget increases.

Instead of seeing the Soviet empire's dissolution as a chance to reduce foreign aid, the Bush administration gives money to former Soviet client states. On the S&L issue, the president has been virtually silent, allowing liberals to blame the scandal on "greed" and "deregulation." On almost every issue, from the minimum wage to child care, from disability legislation to taxes, from the environment to racial quotas, the White House has conceded the fundamental argument over whether the government solves problems or causes them.

The average voter, having been told by both sides that government intervention is needed, will logically assume that the bigger and more expensive version of the program is more likely to solve the problem. George Bush has returned Republicans to the "dime-store New Deal" mentality that made the party so ineffective during much of the post–World War II era.

George Bush's blunders must not trap supporters of free-market policies. If we surrender on the fundamental issue of whether government is good or bad, we make the same error. We cannot simultaneously regain the initiative on policy and retreat on matters of principle. If the administration proposes a policy that is bad, we must not hold back criticism simply because the liberals in Congress have a proposal that is worse.

It would help us if the free-market movement had a strong leader to make the argument that big government is bad. For better or worse, conservatives and libertarians do not naturally attach themselves to government and related institutions. Only the presence of a Barry Goldwater or a Ronald Reagan energizes the free-market community and brings it into the political arena.

Unfortunately, we have no such leader. George Bush clearly

is not that person. Housing Secretary Jack Kemp has fallen victim to the siren song of big-government conservatism, as has House Minority Whip Newt Gingrich (R-Ga.). Sen. Phil Gramm (R-Tex.) had been seen by most free-market advocates as the heir apparent to the Goldwater-Reagan legacy, but his flirtation with higher taxes, if consummated, would probably take him out of the running.

While there may not be an obvious choice to lead free-market supporters at this time, someone may emerge out of the budget chaos created by the White House. A less well-known figure, such as Sen. Bill Armstrong (R-Colo.) or former Delaware Gov. Pete DuPont, could vault into a position of prominence by taking the lead in opposition to higher taxes.

While a strong leader would help put free-market supporters back on the offensive, those of us who believe in more freedom should not wait around. If there is a battle to be fought, we should fight. A good example is the president's deplorable flip-flop on taxes. As I write, a deal has not been announced, and taxes have not yet been raised. But realistically the odds of blocking a tax increase supported by a Republican president, most of the Republican "leadership" in Congress, and almost all of the Democratic party are formidable.

Nonetheless, fighting higher taxes is the right thing to do. First of all, we may win. While the Washington establishment is unified behind the idea of fleecing the rest of the country, there is little doubt that people do not want to send more of their hard-earned dollars to Washington. Nor do most Republican elected officials wish to follow their "leaders" off the cliff. The no-tax resolution recently adopted by the House Republican Conference shows that the rank-and-file may go on the offensive. The resolution may not block higher taxes, but it will certainly make them more difficult to enact.

TO CHANGE GOVERNMENT POLICY WE MUST GET PEOPLE ANGRY. GIVE THEM THE FACTS, AND VOTERS WILL GIVE POLITICIANS HELL.

Even if we eventually lose, active opposition on this crucial issue will re-energize the movement and create grass-roots opposition to big government. This newly activated cadre of citizens can change the political landscape, much as the people drawn into politics by the economic malaise of the Carter years affected politics in the late 1970s and early 1980s.

The fundamental point we must remember is that our ability to affect policy is determined by how successful we are in getting people across the nation angry at Washington. We must take issues like taxes, the odious congressional pay raise, and the S&L deposit-insurance and influence-peddling scandal to the people. If we give them the facts, voters will give the politicians hell.

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DON'T DISMISS THE DEMOCRATS

Hope Outside the Beltway

BY JOEL KOTKIN

On the surface, there are few reasons to look for free-market, entrepreneurial economics from the Democratic Party in the post-Reagan era. Certainly, the current trend within the party is increasingly proregulation and protectionist, most particularly from the Beltway establishment.

But outside the Beltway, there are signs of hope. One comes from a change in the class makeup of the party activists. Since the 1930s, organized labor—traditionally the most protectionist and regulation-oriented sector in our society—has been a dominant force within the Democratic party. But as unions have lost their "market share" in the work force, labor's influence has eroded across the country.

At the same time, the party has become increasingly *dependent* on new constituencies for whom trade protection and at least some forms of market regulation are not big priorities. These include consumers, women, gays, environmentalists, and human-rights activists. These groups are largely middle-class people, many with a private-sector orientation. They also tend to be less obsessed with the federal government, preferring solutions on the local level.

Equally important, the party is, albeit slowly, moving beyond its traditional Northeastern orientation. The regional geopolitics of the past two decades is critical to understanding the possible changes within the Democratic party's key economic policies.

In the evolving world economy of the 1990s, the Manhattan-centered corporate liberals, long a dominant force, increasingly stand outside the flow of the world economy. They manage assets often controlled from outside the region—including companies that have relocated to the South and West—or from overseas, notably Japan and Western Europe. Their influence is ebbing; their capital city, New York, is devolving. Desperate to hold onto power, their last export is their sense of

malaise and American decline that they have helped make the cornerstone of the Democratic party world view.

But the 1990s will see a further erosion of the potency of the Cambridge/Manhattan/Beltway position, as the census reapportions more seats to the South and West. No longer can a coalition of Middle Atlantic, New England, and Midwestern industrial states suffice to win the White House. Meanwhile, the Western and Southern states—with their stronger industrial bases, growing population, and resources (notably energy)—will continue to gain influence. Indeed, save for Gary Hart's personal peccadilloes, these forces already might have captured the party, and maybe the nation, in 1988.

Although certainly capable of protectionism, Southern and Western Democrats tend to have a different fix on the national predicament than Easterners do. They have a hard time accepting the "end of the frontier" mentality that has dominated the Democrats since the time of FDR. If you live in places like Los Angeles, Houston, Atlanta, or Miami, you have witnessed within *this* generation a massive explosion of growth in international commerce, entrepreneurial activity, and culture.

This is very significant. If you live in an emerging region, your fix on problems is more toward managing free-market expansion—what some former Gary Hart people call "empowerment"—than simply redistributing wealth among fixed populations and institutions. Northeastern liberalism has its origin in a region with near-zero population growth. But the problems of that region have little resemblance to those of California, Colorado, Texas, or Florida—where population and job gains in recent decades have been in the double digits.

Equally important, Democrats from these expanding regions often regard international trade and investment with less dread than the Northeastern establishment. In states like California, Japanese or Taiwanese capital helps keep the local economies alive. Few California Democratic politicians, for instance, adopt protectionist rhetoric like that of Rep. Richard Gephardt (D-Mo.). It simply doesn't wash in a multiracial state increasingly dependent on world trade and investment.

Of course, purists will not like the policies of even the most free-market Western Democrats. These Democrats will favor an activist government—in terms of environmental protection, transit infrastructure, and education—that many traditional libertarians might abhor. Although market-oriented, they will not push for the massive privatization of public services. But their policies would prove far more acceptable than those that now characterize the current mainstream Beltway party.

If you detect my less-than-wild enthusiasm about even these changes, you're right. The Democrats—under the best of scenarios—will adopt policies at times that are too statist, too interventionist. But in this less than perfect world, there are many reasons for people of a libertarian bent to remain allied with parts of the Democratic Party.

First, as stated above, there are forces acting within the party who are better than the established leadership. There are allies worth having on economic issues, such as New Jersey's Sen. Bill Bradley. They need to know that there is a free-market constituency for them. Someday, the Democrats will have to win an election—after all, there is Dan Quayle—and it would be good to have market-oriented Democrats inside the party.

Second, the Republicans also present many problems. Many Republicans yearn for the return of the nationalist and interventionist policies of the Nixon years, following the Kevin Phillips school of authoritarian and hierarchical conservatism. A Phillips-style corporatist industrial policy—which has natural sympathy among the mostly Republican corporate aristocracy—fits what Michael Harrington used to call "socialism for the rich," essentially, using the state to protect the current distribution of assets.

More important, the Republican party also has chosen to embrace within its core the most repressive and authoritarian elements in our society. The most important political advocates of censorship, abortion bans, and the insane "drug war" are members of the GOP. The many smart Young-Republican libertarians in Washington may scoff at the notion of putting someone in jail for smoking a joint or performing an abortion, but they provide the intellectual fodder and staff work for those who do.

Often, friends with free-market orientations are shocked that I still consider myself a Democrat, allying myself to some extent with the likes of Richard Gephardt or Mario Cuomo. Yet given the choice between such alliances and ones with proto-fascists like Bill Bennett and Jesse Helms, I'll accept being called a donkey any day.

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SUPPLY-SIDE GOES INSIDE

Growth Is the Issue

BY BRUCE BARTLETT

President Bush's recent abandonment of his "no new taxes" pledge has been widely interpreted as equivalent to abandonment of the supply-side economic policy of the Reagan administration. But the central tenet of supply-side economics is not that taxes should be abolished or

cut indiscriminately. Nor is it correct to say that we always prefer deficits to higher taxes. The point which supply-side economics raised is that the impact of taxes on incentives and growth should be minimized as much as possible.

High marginal income-tax rates, taxes on entrepreneurial activity (such as the capital gains tax), and taxes on saving and investment are clearly more adverse to growth than consumption taxes. Because they discourage economic activity, the former have much higher "excess burdens" than the latter. (*Excess burden* is the difference between the cost of a tax and the amount of revenue it collects.)

And certain tax "cuts" might not promote growth, whereas certain tax increases might. The reason for this is that certain tax incentives may bias investment or other economic activity away from productive uses into unproductive uses. Eliminating such incentives from the tax code, while perhaps increasing taxes for those taking advantage of them, would nevertheless lead to a more productive allocation of resources, thus contributing to growth.

WHEN IT COMES TO TAXES, BUSH HAS ESSENTIALLY STUCK TO THE SUPPLY-SIDE POSITION IN THE BUDGET NEGOTIATIONS.

Last, we must note that not all tax cuts or tax increases are what they appear to be. A good example is the capital-gains tax. A reduction in the tax rate on capital gains would increase federal revenue in the short run. Obviously, the converse is true as well: An increase in the capital-gains rate would certainly lose revenue. Thus one must carefully distinguish between tax rates and tax revenue when considering changes in the tax system.

Although it is too early to say where the 1990 budget negotiations will end up regarding taxes, it appears that President Bush is holding to essentially a supply-side view:

- He continues to support a reduction in the capital gains tax as a way of stimulating risk-taking and entrepreneurship.
- He has strongly resisted the call to increase tax rates.
- He has supported only consumption-oriented taxes, such as those on alcohol, or the scale-back of tax deductions, such as that for state and local taxes, that adversely affect growth. (The federal deduction for state and local taxes essentially subsidizes state and local spending and has led to much greater spending at the state and local level than would be the case without such a deduction.)

What about the future? Where should we strive to make additional gains? Clearly, the answer depends a great deal on politics. In an atmosphere where people are obsessed with deficits, it obviously will be difficult to enact legislation that will reduce federal revenue. Moreover, it is clear that the forces of envy and income redistribution are in the ascendancy. Even Republicans like Kevin Phillips press for tax increases on the rich in the name of "equity." Still, despite such constraints, some things can be done.

First, to withstand any efforts to raise federal tax rates, we can build upon the general support that still exists for tax reform. This will put us in a better position to make gains whenever the political/fiscal environment becomes more hospitable to tax cuts. In addition, we can seek out additional trade-offs between tax preferences and tax rates in order to move toward a flat-rate tax system in a revenue-neutral manner. There are still many distortions left in the tax code, such as the deduction for mortgage interest, that we could "cash in" to finance lower marginal tax rates. Just making the argument for such a trade-off will help keep alive the issue of lower marginal tax rates.

Second, we can identify and press for reductions in taxes where a plausible case can be made that higher revenues will result. Capital gains is the obvious example, but taxes on any form of income that is particularly sensitive to the rate of return, such as business profits, might also qualify.

Third, we should encourage tax reform efforts at the state and local levels. State and local taxes are an increasingly significant element of total taxation. They are also an area where taxes have been rising rapidly. It is possible that a new round of tax revolts in states like New Jersey could lead to a new round of tax cuts in Washington in the 1990s, just as Proposition 13 in California set the stage for tax cuts in the early 1980s. A scale-back of the federal deduction for state and local taxes would greatly encourage this trend.

Fourth, we need to encourage tax reform efforts in the developing world, including Eastern Europe. Although most nations have reduced their tax rates in recent years, in response to tax cuts in the United States, many still have rates that are far too high. International organizations such as the International Monetary Fund and the Agency for International Development need to make tax-rate reduction a central element of economic reform as a condition for receiving aid.

Finally, it is not really necessary any longer to pursue an explicitly supply-side economic agenda because the central points that supply-siders made in the mid-1970s about the evils of high tax rates and the errors of Keynesian economics are now, for the most part, accepted by mainstream economists and policymakers. If supply-side economics is dead, it is due to its own success.

Bruce Bartlett is deputy assistant secretary for economic policy at the Treasury Department. The views expressed are his own and not necessarily those of the Treasury Department.

RESISTING REGULATION

A Free-Market Survival Guide

BY WILLIAM A. NISKANEN

Those of us who support continued deregulation face a daunting task. The trend in Washington, in both the White House and Congress, is toward greater regulation. Nevertheless, we should not give up hope. The economic case for deregulation remains as strong as ever. We just have to present that case to voters in an effective manner.

Much of the demand for greater regulation springs from the public's hostility to ever-increasing federal taxes and spending. Because of the intense focus on the budget deficit, special interests have generally abandoned their calls for new social spending. Instead, they now attempt to have government mandate that employers provide specified benefits for employees. This effectively hides the costs of new programs. Instead of showing up as a line in the federal budgets, new programs will be paid for by a multitude of employers.

Several mandated benefits have already been approved. Government increasingly mandates certain pension benefits. Legislation that requires advance warning of plant closures and major layoffs was approved in 1988. Congress approved legislation that requires assistance to disabled workers and customers this summer. And a bill to require parental leave was recently approved by Congress, only to be vetoed by President Bush. More such mandates are in the congressional mill, the most important of which would require all employers to provide a federally structured medical-insurance program.

Further, the partial deregulation of certain industries that was enacted in the late 1970s and early 1980s may ironically lead to new regulations in the 1990s. The federal government substantially reduced the regulation of several industries but failed to reform the remaining government roles in these industries. As a consequence, the developing problems in these industries are broadly (but incorrectly) perceived to be the result of deregulation, rather than of the failure to reform the remaining government roles.

The most striking example is the savings-and-loan crisis. Starting in 1980, the deposit rates at S&Ls were gradually deregulated, but the federal insurance on deposits was sharply increased. The combination of these conditions created a "moral hazard," in which owners of banks with low or zero net worth had an incentive to make high-risk loans, in effect gambling with taxpayers' money. We all know what this situation led to. But how many people place the blame on federal deposit insurance rather than deregulation?

Airline deregulation led to a large increase in the number of flights, but the capacity of the airports and airways system has hardly changed; no major new airport has been built for 15 years, the number of controllers has not increased, and the government has yet to permit a peak-load pricing system for congested airports. The combination of these conditions has led to increasing congestion and delays and some pressure for reregulation even though airline safety has continued to improve.

The long process of deregulating telecommunications services has also not been matched by complementary changes in the remaining government roles. New technologies have increased the demands on the frequency spectrum, but the government still manages the spectrum the way the Soviets run their economy. Cable television rates were deregulated in 1986 without permitting the entry of other cable services (most importantly, the local telephone companies) to challenge the local monopolies. As a consequence, cable rates among monopoly companies soared. But when Congress acted this summer, it did not open up cable television to new competitors; it reregulated cable rates.

In these three areas, one might almost suspect Congress and the bureaucracy of conspiring to discredit deregulation.

And good times produce new demands. When people are no longer concerned about the economy, it seems that they begin to look for other problems for government to solve. The demand for environmental benefits, for example, seems to be growing.

BECAUSE OF THE BUDGET DEFICIT, SPECIAL INTERESTS NOW CALL FOR MANDATED BENEFITS RATHER THAN NEW SPENDING.

Given this outlook, what can be done to revive the case for deregulation? The first task, I suggest, is to address each of the conditions that have led to the increased demand for regulation. A different response is appropriate in each case. Mandated benefits should be opposed without qualification, to force these demands back through the federal budget. Hiding the costs of the programs ensures that they will grow out of control. Putting them on budget makes sure that people know just what the programs cost and allows them to decide whether the benefits are worth the price.

The concern about the soundness of the banking system could be used to make the case for removing the restrictions on branching and on lines of business. The rapid increases in medical-insurance premiums reinforce the case for removing

state mandates on required coverage. Increasing power prices could contribute to deregulating the production of electricity. Food and Drug Administration red tape has caused much-publicized delays in getting AIDS drugs to patients. This could lead to a broader review of the efficacy standard for approving new drugs.

The free-market community should be ready to exploit these targets of opportunity. The broad, if somewhat inchoate, concern about America's competitiveness could provide the common support for a new deregulation movement, because most regulations increase the costs of American firms relative to those of their foreign competitors.

The short-term prospects for regulation are discouraging. But with effort, the long-term prospects can be much better for free-market advocates.

William A. Niskanen is chairman of the Cato Institute and editor of Regulation *magazine.*

SHIFTING THE BURDEN OF PROOF

Government on the Defensive

BY MICHAEL BARONE

Do free-market economic policies have a future in the United States? The answer, I think, is yes—a qualified yes, a yes with a considerable number of exceptions, but a yes that is qualitatively different from the qualified no that was the answer to the question just 10 or 15 years ago.

A half-generation ago, the politicians still were and the public still seemed attached to the idea that government could significantly improve on the free market through concerted action. At the macroeconomic level, that meant Keynesian demand management. At the microeconomic level, it meant price controls on oil and gas and on rental housing in big cities and university towns.

But even then, faith in government was weakening. In the Carter years—when the Democrats held a 2-to-1 margin in the House of Representatives and had solid control of the Senate—Congress rejected measures to establish a consumer protection agency and to strengthen labor unions. When the administration proposed higher taxes on the rich, the Congress passed instead a capital gains tax cut. The voters of California passed Proposition 13, and the voters of Massachusetts passed Proposition 2½. All of this before Americans elected Ronald Reagan president, and in constituencies and forums that many assumed were bastions of welfare-state liberalism.

The political marketplace reflected changes in the larger society. The historian William McNeill has a rule for understanding long-range trends: In wartime, societies want larger government. In peacetime, societies want smaller government. Applied to the United States, this helps explain how we moved from the New Deal to Reaganism. Roosevelt wanted to expand a government that was spending about 5 percent of gross national product, and a war-accustomed nation agreed. Reagan wanted to hold down the size of a government that was spending about 25 percent of GNP, and a peacetime nation agreed.

The difference of the times explains the seeming inconsistency. The policies that had worked well enough—very well indeed, I would argue—in the 1940s and 1950s, by the 1970s and 1980s were not working very well at all. And so, in a democracy, and despite the prejudices of political elites and the vested interests of bureaucrats, they were discarded.

Nor should we suppose that people easily forget the effects of major depression and total war or of stagflation and bracket creep in peacetime. These events create enduring political predispositions. The bread lines of the 1930s taught most Americans that the free market did not work very well. The gas lines of the 1970s taught most Americans that government regulation did not work very well.

The result is that the Americans of the 1990s are much less disposed to believe that government can solve problems than were the Americans of a generation or two ago. And they are more inclined to see themselves hurt by government action—or hit by government taxation.

The catastrophic health-care program of 1988–89 most vividly illustrates this effect. Congress passed it at the behest of the American Association of Retired Persons, the largest lobbying group in the country, and government experts crafted it so that the benefits would go to large numbers of recipients while the burdens were concentrated on a relatively small number of the affluent. But look what happened. The intended beneficiaries were apathetic or unconvinced that the program would help them, while those who would pay more were furious. They raised such a large political stink that a Congress which had passed the program by a wide margin proceeded to repeal it by a wide margin just a year later. The political process on this issue is clearly biased toward the market and away from government.

And so it goes on other matters. Gasoline prices may rise, but few raise the early 1970s cry that government must set prices. Threats of inflation generate no demand for the wage-and-price controls adopted by that supposed conservative Richard Nixon. The ABC child-care program—seemingly designed to provide for early-year child care all the features of a failed public school system—was rejected by Congress, rejected by liberal Democrats as well as conservative Republicans. Even on issues—farm price supports, trade restrictions—

on which politicians still pass antimarket measures, they are moving away from government regulation and toward markets.

Some assert that a changing income and wealth distribution will produce a populist response from voters, but that economic shift has been going on for more than a dozen years and has produced no perceptible change in that direction in all that time: as much proof as the political process ever gives us that it won't in the future.

In legislatures, in political campaigns, on city councils, and on county boards of supervisors, the burden of proof is now increasingly on those who would propose public spending programs and government regulation. That is likely to continue to be the case, regardless of who is elected, regardless of partisan tides, so long as market-oriented policies are seen to produce good results.

Michael Barone is a senior writer at U.S. News & World Report *and author of the recently released* Our Country: The Shaping of America from Roosevelt to Reagan *(The Free Press).*

LIBERTY ASCENDANT

The Global View

BY PAUL CRAIG ROBERTS

In the postwar period a small force of champions of economic liberty avoided demoralization by university faculties and public policy. Unheralded and isolated, they stuck to their guns. In the 1980s public policy changed in their direction. The United States and the United Kingdom dramatically reduced tax rates; the United Kingdom and France privatized; regulation and socialist approaches to welfare lost their luster. The political rhetoric also changed, and speeches by Ronald Reagan and Margaret Thatcher influenced the entire world.

After this heady experience, many feel that we have lost the policy initiative. Indeed, the nihilists of the American political establishment, who believe in nothing but their own careers, are an uninspiring lot. Our enemies among the journalists do their best to demoralize us with their mendacity, lies, and attempts to convince the population that Reaganomics was all a mistake. But no one believes them. The basic policies have not been overturned, and there is no public support for going back to socialism.

Despite the journalistic hype of "the widening income gap" and "the rich get richer," there is no public support for raising marginal tax rates. Surveys show that the public has lost faith in egalitarianism to such an extent that the *Washington Post*, probably the nation's most important advocate of egalitarianism, ran a front-page article on April 30 reporting that

THERE IS ALMOST NO POPULAR SUPPORT FOR SOCIALISM. EVEN MIKHAIL GORBACHEV EMBRACES THE IDEA OF A MARKET ECONOMY.

Americans do not share the egalitarian social vision. Only 29 percent of Americans see redistribution of income as a government responsibility. Americans are so turned off by government that it is impossible to get a majority to vote.

Ironically, the American free-market movement has been weakened by its success, not by its failure. The postwar champions of economic liberty have personally lost the initiative because their ideas have been accepted and the initiative has moved into wider hands. Indeed, there is no other initiative today in Eastern Europe, the Soviet Union, Latin America, China, and even much of Africa. We feel less important, and are, because others have taken up our causes.

The gospel of free markets has even won converts within the Kremlin. On February 5, the Soviet foreign minister, Eduard Shevardnadze, declared that communism "has been destroyed by the will of people who wished no longer to tolerate coercion." Two days later marked a turning point in world history. The Communist Party repudiated Article Six of the Soviet Constitution and stripped itself of its monopoly of power. The same party conference endorsed the principle of private property.

Not long thereafter, Mikhail Gorbachev, with Margaret Thatcher sitting beside him nodding in approval, told a live televised news conference in Moscow that the creation of a market economy in the Soviet Union was essential. Accused of abandoning socialism, Gorbachev replied that the market economy, unlike socialism, "is an invention of civilization."

There are still battles to be fought. Advocates of big government continue to press their agenda on behalf of "the handicapped" and "the environment." But when the head of the Communist Party of the Soviet Union dismisses socialism as an ideology of intellectuals and embraces the market as the historical invention of civilization, the war is almost over.

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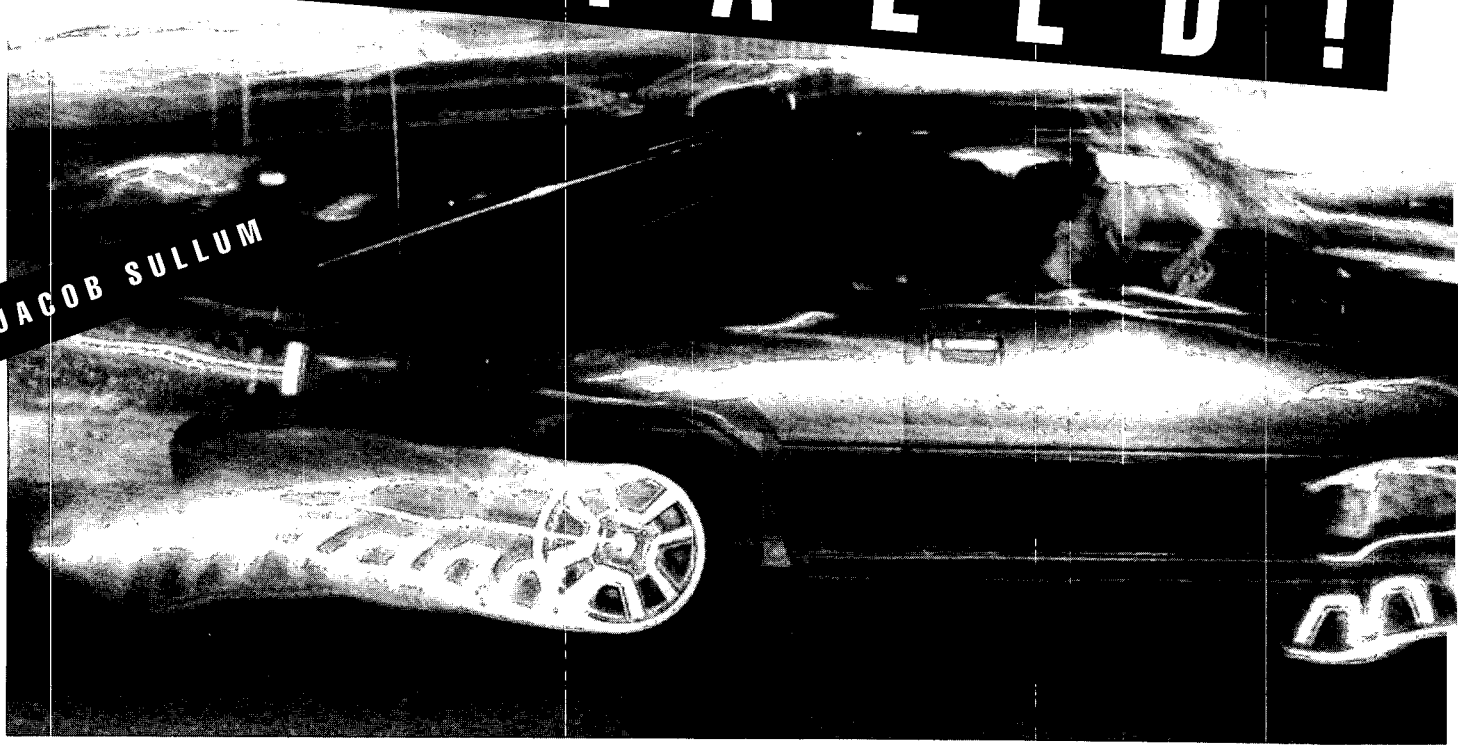
TOTALED!

BY JACOB SULLUM



Conway Collis knew his audience when he announced that he was running for California insurance commissioner last March. "If I'm elected commissioner, I'm not going to be fair to the insurance industry," declared Collis, who was later praised by Ralph Nader and endorsed by Harvey Rosenfield, the man behind Proposition 103. "I'm not going to be reasonable. I'm not going to be even-handed. I'm going to break their backs. I'm going to be their worst nightmare come true."

Although he lost the contest for the Democratic nomination, Collis's remarks revealed as much about the public mood in California as they did about his own attitudes. In a state where virtually every driver has a car-related horror story to tell, the insurance industry is not very popular. Demagogues such as Collis paint insurers as both greedy and inefficient, crooks who provide poor service and charge outrageous prices for it. They find receptive listeners among urban drivers who pay upwards of $1,200 a year for insurance.

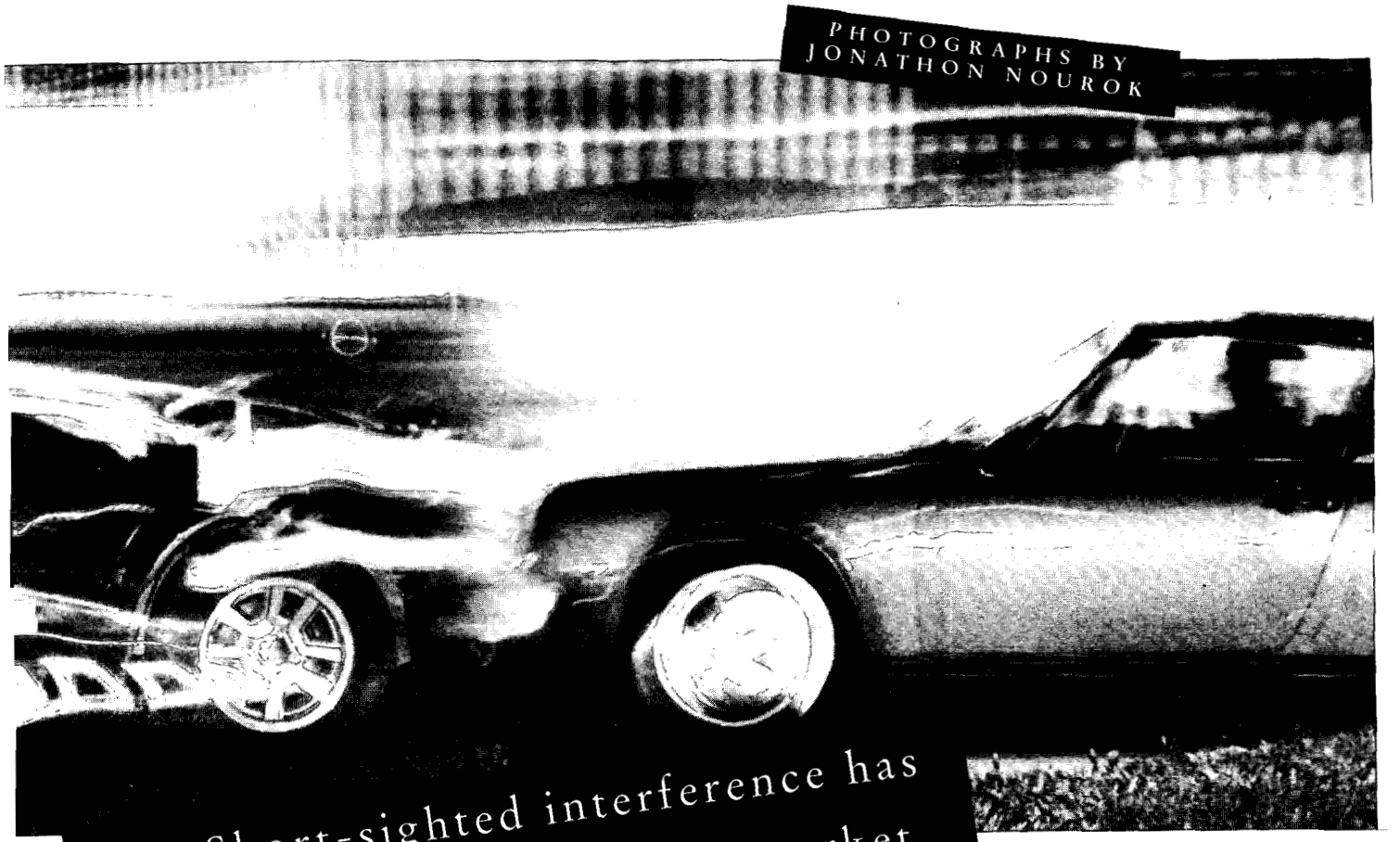
A combination of factors is pushing up the price of car insurance in California and elsewhere, including increases in traffic congestion, car thefts, litigiousness, damage awards, and legal, medical, and car-repair costs (all three of which are rising faster than the rate of inflation). But frustration over escalating premiums, particularly in highly urbanized states, has focused on insurers. It is feeding a drive for greater regulation of the car-insurance industry, epitomized by California's draconian Proposition 103.

This Naderite initiative, approved by the voters in November 1988 but still entangled in litigation, seeks to impose rate rollbacks of more than 20 percent; forbid insurers to set prices according to risk; require insurers to obtain state permission for rate changes; and force companies to continue serving current policyholders indefinitely. It would transform one of the freest auto-insurance markets in the nation into a command-and-control system in which political forces prevail over the choices of consumers.

Proposition 103 has already spawned rollback measures in other states. "What's going on is a movement from markets to a regulated system," says University of Chicago law professor Richard Epstein, who writes frequently on tort law and insurance and has represented Allstate Insurance Co. "The essence of all these bills is an effort to confiscate....The difference between unregulated and regulated rates is the difference between feast and famine."

The urge to *do something* about car insurance is understandable. In 1988, the average premium in California was $673, the fourth highest in the nation (behind Massachusetts, New Jersey, and Nevada). During the last 20 years auto-insurance rates nationwide have climbed by an average of 7.7 percent a year, compared to an overall inflation rate of 6.3 percent a year.

A handful of jurisdictions have seen dramatic increases. Between 1982 and 1988, for example, average premiums jumped 135 percent in Arkansas, 130 percent in the District of Columbia, 119 percent in Massachusetts, and 111 percent in North Carolina. Premiums are especially steep in high-risk,



PHOTOGRAPHS BY JONATHON NOUROK

Short-sighted interference has wrecked the car-insurance market. A repair guide.

high-density areas such as Philadelphia, Los Angeles, Boston, Detroit, and Miami. A colleague of mine moved to Los Angeles a year ago; his premium shot to $1,900, nearly four times what he had paid in North Carolina.

Not only is car insurance expensive, it's mandated by law in all but eight states. Having imposed this requirement, state governments must guarantee that insurance is available to every driver at an affordable price. This imperative has become the basic rationale for a variety of regulatory systems.

Two states, Massachusetts and Texas, actually set insurance rates. Twenty-two others (including California) require prior approval of rate changes in all or some cases. The rest allow insurers to set their own rates without approval, although most require that the state insurance office be notified of changes.

When regulated rates approximate competitive prices, the market works well: In most states, more than 98 percent of drivers obtain insurance in the voluntary market. But in several states, especially New Jersey, Massachusetts, and South Carolina, government-approved rates are inadequate. Regulation and pre-emption by the state drive out companies that specialize in covering motorists rejected by other insurers.

The assumption that the market cannot serve high-risk motorists becomes self-fulfilling, and many drivers end up in the residual (involuntary) market. These drivers are either assigned to insurers by the state or covered by a fund to which all insurance companies must contribute. Since their premiums are kept artificially low, they have to be subsidized by drivers in the voluntary market.

This system creates perverse incentives. When I told a Los Angeles insurance broker that I had never been involved in an accident and had received only one ticket during the last three years, he said that was too bad. If I had been in a crash or received more than one ticket, I would have qualified for the assigned-risk plan, and my annual premium would have been $650. As it was, I would have to pay twice that. In that case, I suggested, it would be in my interest to ram a parked car or run a red light in front of a police station. "That might not be such a bad idea," the broker said. He was joking. I think.

When the state does not allow insurers to raise rates enough to cover the cost of subsidizing the residual market, companies try to cut costs. They get pickier and pickier about whom they'll insure, ceding more and more drivers to the residual market. Ultimately, the residual market may include a majority of drivers, along with the very bad risks it was intended to serve. In New Jersey, the state's now-defunct Joint Underwriting Association insured 47 percent of drivers last year. In Massachusetts, insurers had ceded an astounding *65 percent* of drivers to the Commonwealth Auto Reinsurers fund.

A 1986 General Accounting Office study found that the proportion of drivers served by the residual market was twice

as high in prior-approval states as in competitive states. "The growth of the shared market is inexorably linked with regulatory control of insurance pricing," writes University of Massachusetts economist Simon Rottenberg in a 1989 paper.

Despite the problems associated with rate regulation, groups such as Rosenfield's Voter Revolt argue that the government must impose price rollbacks to compel insurers to cut the fat from their operations and stop gouging customers. Yet by every important measure, the auto-insurance market is quite competitive. Concentration is low, and so are barriers to entry. So it's hard to see how insurers could afford to be grossly inefficient or to charge excessive prices, as Voter Revolt alleges.

But such charges appeal to drivers who want to vent their anger at somebody. "The public is suspicious of the insurance industry," says Scott Herrington, a professor of insurance and finance at the University of South Carolina. "A lot of people don't care about competition. They just want their rates to go down."

That is what Proposition 103 promised. The initiative's solution to high premiums was to tell insurance companies to stop charging so much. Specifically, it ordered them to cut their rates to 20 percent below the levels of November 1987. The only exception was for insurers on the verge of insolvency. In May 1989, however, the California Supreme Court ruled that insurance companies are entitled to a "fair and reasonable return," in effect scuttling the rollback provision.

Now the only way to cut premiums for people in Los Angeles and San Francisco is to raise them for drivers elsewhere in the state. This is what Insurance Commissioner Roxani Gillespie, appointed by Gov. George Deukmejian, has begun to do.

The idea is familiar: Take a little from each member of a large group and give a lot to each member of a small one; if you're lucky, the first group won't notice, and the second group will appreciate the favor. "You're buying votes in urban areas," Herrington says. "If insurance companies are to survive, the only real political gain to be had is to intervene in the market so that high-risk groups pay less and low-risk groups pay more."

In addition to location, insurance regulators have questioned the use of several other pricing criteria. Massachusetts, for example, has prohibited insurance companies from considering sex, age, or marital status in setting rates. The state's insurance commissioner has declared that pricing categories must serve "established public purposes" and has expressed a preference for "classification which...takes a small increment from [each of] many to lighten the load of a designated few."

Such measures appeal to people's sense that insurance customers ought to be treated as individuals, not categorized by such seemingly arbitrary factors as sex, age, or zip code. The fact that people tend to apply such standards of justice to insurance premiums—as opposed to, say, the price of corn flakes or haircuts—is closely related to compulsory insurance laws. By requiring drivers to buy coverage, government takes the "voluntary" out of this market transaction. If they're going to make you buy it, you might argue, the price had better be fair. Even the insurance lobby, which certainly knows better, sometimes says that the object of rate setting is to make sure that policyholders pay their "fair share."

This approach, however, misconstrues the issue. Risk categories are not supposed to be fair; they're simply supposed to help estimate how likely it is that customers will file claims and how large those claims will be. If you live in a congested, high-crime area such as Los Angeles, you are more vulnerable to accidents, theft, and vandalism than if you live in Fresno. Men tend to get into more accidents than women, and your likelihood of being involved in a crash declines with age. Married men are safer bets than single men.

Such correlations have been established by studying the actual experiences of millions of drivers. The easier a factor is to measure and the stronger its relationship to claims, the more apt insurance companies are to consider it. Gender qualifies on both grounds. But insurers find that mileage is a poor substitute for gender both because it is difficult to verify and because it does not fully account for the differences between the accident experiences of men and women.

Now that the rollbacks promised by Proposition 103 have degenerated into fiddling with risk categories, Voter Revolt is pushing an initiative that would create a state auto-insurance monopoly. "If the auto insurers refuse to lower their rates and obey Proposition 103 within a year after the enforcement measure is passed, they will be relieved of the privilege of doing business in California," Rosenfield explains in a *Los Angeles Times* piece. "In their place would be a non-profit, publicly controlled auto insurance company."

To forestall price regulation and the inevitable spiral of state intervention—culminating, perhaps, in a government takeover of the industry—insurers have embraced no-fault insurance in one form or another. Insurers in California spent $70 million in 1988 to promote an unsuccessful no-fault alternative to Proposition 103. The Insurance Information Institute's literature notes the shortcomings of the liability system and touts the virtues of strong no-fault laws.

The case for no-fault is based on the view that the liability system is fundamentally flawed, that the compensation it provides has little to do with actual damages. The industry estimates that fraudulent claims represent 15 percent to 20 percent of all car-insurance payments. In California, Herrington says, about 75 percent of personal-injury claims involve sprains and strains, which are notoriously difficult to verify.

The incentives created by the liability system for fraudulent and exaggerated accident claims are familiar: Insurance provides deep pockets into which plaintiffs can reach with the help of attorneys, who are all too eager for their share of the money. Plaintiffs with minor injuries tend to be overcompensated, since insurers prefer to settle a small claim rather than endure the cost and inconvenience of a court battle. Those with more serious injuries, by contrast, tend to be undercompensated,

since they need money soon and insurers are less inclined to settle a large claim out of court.

Consider a typical fender-bender. A friend of mine, who lives in Los Angeles and is not insured, was turning right out of a parking lot, moving at a few miles an hour, when his front bumper scraped the right rear bumper of another car. "We stopped, and we talked," he recalls. "She [the other driver] said she was OK."

That evening, my friend called the other driver and talked to her husband. "At first, he wasn't saying anything about injuries," my friend says. "In fact, he said everyone was OK." But the man said it would cost more than $500 to fix the bumper. That seemed excessive to my friend, who suggested they go to another garage for a second estimate. "At that point, he got irritated, and he said, 'I'll teach you a lesson.' "

A few weeks later, my friend heard from the other driver's attorney. The woman's insurance company later dispatched an adjustor to examine his car and judge the severity of the accident. "She said there was no way you could get even the slightest sore neck from it," he says. But the adjustor, who declined to put that assessment in writing, also told him that the other driver was seeking thousands of dollars in compensation under her uninsured-motorist coverage for neck and back injuries sustained in the accident.

If the company pays the claim, it may in turn sue my friend, who now wonders whether he should have simply paid the inflated repair bill. He observes: "We have developed a system in which extortion is easy, because they say no accident is so small that you couldn't get a neck or back injury from it."

The perceived inefficiency and inequity of the liability system gave rise to the movement toward no-fault insurance some 25 years ago. The idea was deceptively simple: In exchange for surrendering their ability to sue, policyholders would receive compensation from their own insurers for injuries caused by traffic accidents, regardless of who was at fault. By eliminating lawsuits and payments for noneconomic damages (mainly pain and suffering), no-fault insurance would reduce the cost of settling claims and lead to lower premiums.

In practice, however, no state has enacted a pure no-fault system, which would do away with auto-liability suits entirely. Most of the nominally no-fault systems allow suits in all but the smallest cases. Still, the idea of no-fault remains popular, and lately activists and legislators have incorporated it into a variety of plans that allow consumers to choose between liability and no-fault coverage.

A 1985 study by the U.S. Department of Transportation verified some of the claims made for no-fault. Looking at 12 years of records in 24 jurisdictions, the study found that the proportion of accident victims who received personal-injury compensation was nearly twice as high in states with no-fault laws as in states with traditional liability systems. On average, compensation was quicker and more generous in no-fault states.

These findings are to be expected. After all, no-fault means that you receive compensation from your own company, regardless of responsibility, just as you would under personal-injury or collision coverage in a standard liability system. But like other kinds of first-party coverage, no-fault policies do not compensate for noneconomic damages. And unless it is accompanied by significant restrictions on lawsuits, mandatory "no-fault" actually *increases* insurance costs.

States that substantially limit the ability to sue, however, have managed to control rate hikes. In both New York and Florida, for example, growth in premiums declined markedly after these states tightened restrictions on law-

"If the auto insurers refuse to obey Propostion 103, they will [lose] the privilege of doing business in California," explains Harvey Rosenfield of Voter Revolt. A state-run insurance company would take their place.

How often do you forget to signal before turning or go through a traffic light as it turns red? Most of these errors don't result in accidents. But when they do, such "negligence" becomes much more serious.

suits. In 1988, Florida ranked 27th on the list of average premiums; New York, which you would expect to be at or near the top, ranked 10th.

Strong no-fault has several advantages for insurers as well. It cuts their legal costs and makes business more predictable by curtailing the uncertainty of court battles. Although it increases the likelihood of paying claims, it reduces the prospect of soak-the-insurer court judgments. Furthermore, no-fault plans divert the urge to beggar insurers through rate regulation.

But lawsuit restrictions, which are central to the no-fault concept, raise a troubling question. When is it legitimate to deprive an injured person of the ability to sue? Trial lawyers, who have their own reasons for vociferously opposing no-fault insurance, say never. Every individual, they argue, has a basic right to seek a civil-court remedy for injuries or damages caused by another's negligence.

As a general principle, this appears to be correct. A right not to be injured by someone else's negligence would have little meaning unless one could obtain compensation for violation of that right. Justice seems to require that the person who caused the injury make amends. But as a practical matter, the law places limits on who can sue, when, under what circumstances, and for how much. The most fundamental limit on suits is the legal definition of *negligence*.

No-fault advocates question the meaning of negligence in the typical traffic accident. Jeffrey O'Connell, the University of Virginia law professor who co-wrote the first model no-fault bill, puts it this way in his 1971 book *The Injury Industry*:

"How can one talk with moralistic fervor about the wrongdoer 'answering for his wrong' when one's wrong in a traffic accident, if wrong there be, usually consists of a momentary motoring slip of the type that all of us are guilty of again and again, and when the wrongdoer is not only allowed but *required* to pass the payment for his wrong along to an insurance pool?" O'Connell argues that a certain number of accidents are inevitable and that in most cases the person who is deemed to be responsible has not acted differently than the average driver.

How often do you forget to signal before turning, miss a car in your "blind spot" while changing lanes, or go through a traffic light just as it's turning red? Most of the time, such common errors do not result in accidents. But when combined with the mistakes of other drivers or some other factor—say, icy streets or a defective traffic light—such routine "negligence" becomes much more serious in retrospect.

In such cases, the liability system doesn't seem to deter bad driving. Since your insurance company pays the actual damages, your penalty probably amounts to a premium increase. "If you don't turn on your blinker, it's because, at some implicit level, you consider the risk of an accident to be negligible," says Orin S. Kramer, a New York public-policy consultant who specializes in financial services. "You're not going to calculate the effect on your insurance premium should you end up in an accident that could seriously injure or kill you."

In cases of truly reckless driving, on the other hand, the prospect of a lawsuit may add little to the deterrence provided by criminal penalties. Even in a world where motorists could not sue, speeders and drunk drivers would face fines and imprisonment. And insurers could still consider a policyholder's driving record in setting rates.

The arguments of no-fault advocates suggest that the legal standard for negligence in auto-liability cases needs to be fine-tuned. But they cannot justify doing away with the concept entirely, since at least some accidents

are caused by the failure to exercise reasonable care. A civil remedy should be available for damages caused by careless driving, whether or not a criminal penalty also applies.

This does not mean, however, that drivers could not *voluntarily* accept limits on their ability to sue. Herrington argues that a fully informed, rational consumer would be willing to trade the right to noneconomic damages for lower rates and quick, sure compensation. Both O'Connell and Project New Start, a consumer group, are promoting the idea of allowing drivers to choose between no-fault and liability coverage. Pennsylvania, previously a no-fault state with a low threshold for lawsuits, recently adopted a choice system that includes stricter limits for no-fault drivers.

Under these plans, drivers who choose no-fault insurance pay less and receive first-party coverage; those who choose liability pay more but retain the ability to sue. No-fault drivers, however, still need liability coverage, since they can be sued if they collide with drivers who opt for standard liability coverage or if damages exceed the legal threshold.

So here's the problem: Since it includes liability coverage, the policy purchased by a no-fault driver would naturally cost more than liability alone. But no-fault is supposed to be *cheaper* than liability; this is its main attraction for consumers. Pennsylvania's legislature addressed this problem by simply decreeing that insurance companies must charge less for no-fault plus liability coverage than for liability alone.

New Jersey, which now allows a choice between cheaper coverage with a high threshold for suits and more-expensive coverage with a low threshold, took a more sophisticated approach. It set up a pool through which buyers who choose the low threshold subsidize those who agree to stricter limits. The system is designed to allocate the benefits of no-fault to those who are responsible for them.

This makes some economic sense: Drivers who give up the ability to sue reduce costs and help bring premiums down, a benefit that accrues to all drivers and insurance companies. It is in the interest of insurance companies as a group to offer a lower rate to drivers who agree not to sue except in serious cases. But acting independently, insurers would have little incentive to do so.

A voluntary arrangement similar to New Jersey's pool is conceivable, but high transaction costs would make it difficult to achieve and maintain without coercion. And there is justice in compelling drivers with standard liability coverage to subsidize those with no-fault policies. In essence, such a system imposes a special tax on those who are more likely to use the civil courts. The revenue from the tax helps relieve the burden on those who are less likely to do so. (This scheme could be extended to uninsured drivers as well. Those who chose not to sign a contract limiting their ability to sue would be taxed to fund rebates for those who did.) Such an arrangement is more equitable than one that taxes people to support the legal system regardless of their ability to sue.

Like the question of who pays for the courts, the problem of multiple compensation raises issues of fairness as well as efficiency. If the purpose of civil justice is to make plaintiffs whole, there is little sense in allowing victims who have already been compensated under insurance policies to recover damages in court for the same injuries. Subrogation, which instead gives the insurer the right to seek reimbursement, would prevent such redundancy. Since insurers are more apt to use arbitration and less inclined to pursue small cases, expanded subrogation would probably reduce the number of lawsuits as well.

In addition to these legal changes, states can free up the insurance market by eliminating restrictions that reduce competition and choice. For example, some states prohibit banks from selling insurance; getting rid of this restriction was one of Proposition 103's few sensible provisions. State laws also set minimum coverage standards, which effectively create price floors, and limit the use of group insurance and agent rebates, which can help bring premiums down.

Deregulation can increase the efficiency of the car-insurance market, and legal reforms—such as limiting pain-and-suffering awards or adopting a "loser-pays" system to cover legal fees—can increase the efficiency of the tort system. Such changes may reduce the price of car insurance, but they are not going to make it universally cheap.

Those who can barely afford car insurance can find ways of reducing their risk. (The ultimate answer may be living somewhere else.) But those who cannot afford to buy coverage (or who prefer not to) should not be compelled to do so.

Epstein argues that mandatory insurance laws are necessary because financial responsibility rules that come into play after an accident do not provide adequate deterrence. In his view, the requirement to carry liability coverage is just another prudent restriction on the use of public roads. "If you can't buy insurance, that's a good signal that you shouldn't be driving," he says.

But if liability insurance truly is a necessity, it's because the concept of negligence has been distorted beyond recognition. In requiring motorists to buy insurance, the government is saying that a careful driver cannot reasonably expect to avoid losing an auto-liability suit. The law presumes that every driver will be negligent.

Mandatory insurance laws, in any case, are readily evaded: In South Carolina, for example, an estimated 27 percent of drivers are uninsured; in Philadelphia, about 30 percent; in Los Angeles County, as many as 75 percent, according to the *Los Angeles Business Journal*. Imposing a penalty—for example, license suspension—on drivers who are judged responsible for accidents and cannot pay compensation should deter negligence. This approach focuses on behavior that violates the rights of others, not on the decision whether to buy insurance. Furthermore, it allows the working poor to continue driving so long as they exercise proper care.

"Choice" is the byword of the main alternative to Proposition 103–style reform. That choice should include the freedom to take your chances. ◼

Jacob Sullum is assistant editor of REASON.

NANCY BETH CRUZAN has not moved from her Mount Vernon, Missouri, hospital bed since 1983. Thanks to a recent Supreme Court decision, she may lie there another 30 years. Since being injured in an automobile accident, Nancy has persisted in a vegetative state. Her parents, Joe and Joyce Cruzan, had petitioned to allow the removal of the feeding tube keeping her alive. But by a 5-4 vote the Court rejected their request, affirming instead the state's authority to preserve life.

The decision is significant as a test case of the "right-to-die" credo, which is becoming increasingly relevant as biotechnology enhances the ability of medical professionals to sustain life of drastically diminished quality. An equally significant but less noted aspect of the Cruzan decision is what it reflects about prevailing conceptions of individual self-determination. The Court did not grant to the states an unqualified prerogative to sustain life in all circumstances. Rather, it affirmed the right of persons prospectively to declare their wishes should they become severely incapacitated, wishes that would then be binding. However, in the absence of "clear and convincing evidence of Nancy's desire to have life-sustaining treatment withdrawn," the Court held that Missouri's presumption in favor of life overruled the best judgment of her parents concerning her interests.

Under one interpretation, the Court's decision marks a notable recognition of individuals' rights to control their own medical destinies. The Court explicitly upheld Missouri's refusal to allow termination of treatment on the grounds that Nancy Cruzan had not declared that she would prefer its cessation. Had she anticipated the present circumstances through a living will or some similar device, the Court maintained, her own expressed health-care wishes would have enjoyed decisive weight. Hence the delight of M. Rose Gasner, director of legal services for the Society for the Right to Die: "There are some wonderful things here. The Constitution is being applied in a brand new and revolutionary way."

Nancy Cruzan, however, had not envisioned and taken measures to avert leading a vegetative existence, and so her family is not in a position to appreciate these wonderful things. Instead, Missouri's legislated policy displaces their considered judgment. Gasner's optimism notwithstanding, this enhancement of state power hardly seems to represent an advance for the cause of individual liberty. Was there another alternative available to the Court that would have responded more adequately to individuals' interest in leading their lives—and deaths—at a safe distance from unbidden intrusion by the state?

Among the Court's concurrent and dissenting opinions, no fewer than five distinct principles for resolving such tragic dilemmas were mentioned. The first of these was: Adhere to whatever clear and unambiguous prospective declaration the afflicted individual may have made. A large majority of justices held this to be the preferred course. It is only because Nancy Cruzan left no such affirmation that it became necessary to resort to other principles.

Second, a state's legislated presumption in favor of life

mandates the continuation of treatment for incompetent patients who have made no prior declaration to the contrary. That is the basis on which *Cruzan* v. *Missouri* was in fact decided. It is a classic "half full, half empty" judgment. On the one hand, the state is not granted carte blanche to impose its standards on unwilling individuals. On the other hand, it has been given the power to fill any vacuum left by individuals' nonaction. The state of Missouri hastened to do so, and the Court has now affirmed that authority.

Two other criteria are noteworthy for the cursory attention they received. Although termination-of-treatment decisions are often defended on grounds of the diminished "quality of life" of the patient, and though the hopelessness of Nancy Cruzan's condition was conceded by both sides, none of the justices seemed inclined to urge that the state get into the business of grading life quality. Individuals may do so for themselves, but that is just another way of holding that their own current or anticipatory wishes are to be respected.

Even less was the Court willing to venture into the thicket of utilitarian cost-benefit analysis. Several decades of nursing care will be extremely costly, both financially and with respect to the human costs borne by the Cruzan family, and one may reasonably wonder how either Nancy or anyone else benefits from this expenditure. It is understandable that the Court is eager to evade "pricing life"—even though the consequence is a potentially substantial drain on public funds. Eventually that question will have to be addressed—but not in 1990, not in *Cruzan* v. *Missouri*.

FAMILY MATTERS

IS BIG BROTHER YOUR NEXT-OF-KIN?

BY LOREN E. LOMASKY

ILLUSTRATION BY TROY THOMAS

FIFTH, THE COURT considered and rejected, though not without some expressed sympathy, the claim of the family to decide on Nancy's behalf. Chief Justice William H. Rehnquist, writing for the majority, acknowledged that "Nancy Cruzan's mother and father are loving and caring parents. If the state were required by the United States Constitution to repose a right of 'substituted judgment' with anyone, the Cruzans would surely qualify."

But he also observed: "Close family members may have a strong feeling—a feeling not at all ignoble or unworthy, but not entirely disinterested, either—that they do not wish to witness the continuation of the life of a loved one which they regard as hopeless, meaningless and even degrading. But there is no automatic assurance that the view of close family members will necessarily be the same as the patient's would have been."

Note that Rehnquist did not cite any evidence that the Cruzan family was in fact attempting to advance its own interests at the expense of Nancy's. Presumably there is none. Nor did he allege that procedural safeguards designed to protect the rights of an incompetent individual were inadequate. Rather, Rehnquist's position is grounded on a sweeping epistemic caveat: We are unable to determine with assurance that a family's decision corresponds to that which an afflicted individual would make under these circumstances.

Grant for the sake of argument that this difficult counterfactual proposition is both meaningful and accurate. (Difficult because it is mysterious how one might give clear sense to the notion of what an incompetent patient would, if she were competent, choose to be done to her incompetent self.) What is the practical upshot of such professed judicial skepticism? Only this: The question of whether Nancy Cruzan will live or die is de facto subsumed under the impersonal regulations of the state of Missouri.

The burden of proof between the two contending parties in *Cruzan* v. *Missouri* is thus rendered starkly asymmetrical. The Cruzans, in order to procure termination of treatment, must eliminate all residual suspicion that their own wishes may diverge from those of their daughter. Yet the state of Missouri need offer no evidence whatsoever that its policy corresponds with what Nancy would have desired. But then, how could it? It knew nothing of her, either when it legislated or when the automobile accident destroyed her faculties. There is no reason to believe that state officials possess some privileged access to her desires or interests, let alone Rehnquist's "automatic assurance" of convergence. Nonetheless, the state's decision stands.

The ruling displays exquisite sensitivity to the possibility of individuals' interests being overridden by those of the family while manifesting no apprehension concerning how their interests are affected when yet another aspect of their lives is made

subservient to state directives. This fits uneasily with the Court's professed concern for self-determination. Even less satisfactory is the Court's implicit view of the relationship between stricken individuals and their loved ones. The Cruzans are denied the power to determine whether feeding will continue because they cannot conclusively demonstrate that their desires are identical to Nancy's (or those that Nancy would have if...).

The Court thus seems to assume that family relationships are basically adversarial; the parents must overcome a presumption that there is an implicit conflict of interest between them and their daughter. No one will deny either that such conflicts may obtain or that, when they do, it then becomes the job of the courts to protect those who are unable to protect themselves. Should the adversarial relationship, though, be taken as the norm which, in the absence of unimpeachable evidence to the contrary, guides judicial resolution?

THIS PRESUMPTION RESTS on a narrow understanding of individuals' interests. Among our important interests, some are purely self-contained. Others, however, make essential reference to our ties with others. The vast majority of human beings define their good in terms of valued affectional relationships. We succeed or fail not merely as isolated atoms but as friends and lovers, colleagues, citizens, brothers, parents, daughters.

If I have committed my energies and emotions to some enterprise or cause or social bond, then its flourishing is not merely an external happening that may be instrumental to my own achievements. Rather, its good has been made a constituent of my own. The point is not that my will has been swallowed up by that enterprise, but rather that through identifying with it I have made its fate overlap my own. This is by no means an uncommon circumstance; just the reverse. While some may deliberately elect to pursue a course of maximal detachment from other persons, dealing with them exclusively at emotional arms-length, the life of the hermit or solitary hero is not for many of us.

The Court seems to assume that family relationships are basically adversarial. Should this assumption guide judicial resolution?

Some of these significant associational ties are voluntarily established, but others are not. One may, after extended deliberation, join a political party or a church, but no one chooses the family or linguistic community into which he is born. People may consciously decide to have a child but not who that child will be. Even friendships are not the product of deliberate choice so much as unforeseen serendipity; that is why we aptly speak of "falling" in love. Although these relationships are not deliberately contrived, they constitute for most people the core of a fulfilling life and, importantly, are the foundation from which significant choices proceed.

I do not weigh my options as a detached, naked self but as the chum of this person, the son of that one. These associational ties, some voluntarily established and others not, constitute to a considerable extent the interests I have and thus my reasons for acting one way rather than another. Indeed, it is difficult to understand how a person could develop a sense of self in the absence of distinctive affections that were not, in the first instance, chosen.

It is important not to overstate the point so as to apotheosize social units at the expense of the individual. That is the error of the currently fashionable "communitarian" critique of liberalism. Communitarianism essentially reduces persons to the vectors of social forces that act on them, and maintains as a corollary that individuals' rights and duties derive from whatever the society's dominant conception of appropriateness may be.

Among the many deficiencies of this theory, one of the most serious is its ruthless urge to oversimplify. *Contra* the communitarians, there is not some one community in which we all, willy-nilly, are enrolled, but rather a wide and complex range of social avenues along which we orient ourselves and thereby etch out the varied patterns of our lives. Not all of those options open to us can be embraced simultaneously, and so our choices define the particular mesh of subcommunities in which we will live. It is a good thing that we do not have to make these choices *ex nihilo*, but it is also the case that individuals sometimes find it necessary to abandon that which they have inherited or embraced. So people get divorced, change their religion, even disown their children. In a free society these too are among their legitimate options, and courts are obliged to protect them.

No evidence exists, however, that Nancy Cruzan was estranged from the members of her family and wished to distance herself from their affairs. To the contrary, it appears that family ties mattered to her, that an important component of her self-perceived good was bound up with being the daughter of Joe and Joyce Cruzan. The relationship between her interests and theirs is, therefore, more complementary than adversarial.

To put it another way, Nancy's life had certainly been more attuned to the goals and opinions of her parents than, say, to those of the attorney general of the state of Missouri. It is ironic

that a court decision predicated on Nancy's desires should turn her own preference ordering topsy-turvy. So far as I know, Rehnquist would not characterize himself as a communitarian. But his opinion in effect mandates that Nancy Cruzan's good is deemed to be whatever the state prescribes, while reducing to a nullity those particular associational ties that helped define her life while she had one to lead.

ALTHOUGH THE NINE JUSTICES were deeply divided over how the case should be resolved, they agreed that its disposition would have been much easier had Nancy Cruzan documented in advance her wishes should she become incapacitated. It was her own lack of foresight, pardonable no doubt, that thrust the decision before the Court. Isn't it at least clear, then, that individuals will better serve their own interests if they prepare living wills?

Not necessarily. It is possible for people to enhance the range of their self-determination through anticipatory declarations, but these are, at best, imperfect mechanisms. It is instructive in this regard to compare a so-called living will with a last will and testament. Whether or not someone is dead is, except in a very few instances, easily determined. Being dead does not admit of degree; either you are or you aren't. People who are dead remain dead. An individual who dies may leave an estate and remains to be disposed of, but there is no longer a "him" that can be acted on. Still, in spite of death's relative clarity, judgments at probate can present hard cases.

All the more so with living wills. Incapacity admits of varying degree, from mild, to profound (as with advanced senile dementia), to total. Whether and to what extent it may prove reversible is a judgment call, and few physicians will claim never to have been surprised by the recovery of a patient they had believed to be irretrievably lost. Advances in medical science are, in their very nature, unpredictable and can upset previous calculations. Individuals who have never been in a condition anything like irreversible coma may have only the haziest conception of what they would prefer done to them should that misfortune strike years or decades hence.

Moreover, their desires concerning that future prospect may well be contingent on a host of currently undeterminable factors, such as intervening experiences, what their finances may then be like, and the particular circumstances in which their incapacity will place loved ones. It is impossible to spell out all the eventualities that might ensue and to specify for each just what is to be done. And even if that were possible, it will still be necessary for someone to interpret whether those conditions have been satisfied in the present case.

There are, therefore, significant limits on the extent to which even provident individuals will be able to take charge of what may and may not be done for them once they are no longer competent. A person's best interests may be served not by vainly attempting to anticipate every contingency that could emerge but by allowing those determinations to be made by those in whom he reposes love and trust. This is not to deny that anticipatory declarations should have legal force. But whether or not such a document has been prepared, there will remain considerable room for discretion. The question at issue is whether the discretion should be exercised by an impersonal state apparatus or by those with whom the individual has shared his life.

In this regard, it is unfortunate that a court that acknowledges the potential usefulness of a living will has not taken the analogy further. When an individual dies intestate, we do not think it appropriate for courts to presume that the best interests of the deceased are served by allowing the state to expropriate his estate and use it to advance whatever ends the legislature may fancy—say, highway building. Rather, in the absence of firm evidence to the contrary, it is presumed that his interests require that disposition be made on the basis of blood ties. That presumption is not without perils, and one virtue of wills is that they afford individuals the opportunity to block or modify it should they so choose. Nancy Cruzan left no record of what she would wish done with her in the current circumstances, but that is inadequate justification for conflating her interests with those of the state of Missouri.

THE NEWSPAPERS HAVE uniformly characterized *Cruzan* as a right-to-die case. But it is also, and perhaps more importantly, one with sweeping ramifications for the legal environment within which self-determination can be practiced. While ostensibly deferential to individuals' own choices, it weakens those social structures, most especially the family, that stand betwixt individuals and the state. Persons who define their good by reference to involvement in such social structures, and whose success is a function of the robustness of these units, have thereby been rendered less able to secure that which they value.

So understood, there is ample precedent for *Cruzan*. The tendency to substitute state determinations for those made within the compass of smaller, more intimate social units is ubiquitous. Public schooling lodges in educational bureaucracies prerogatives that were at one time the responsibility of parents. The vast apparatus of the welfare state has almost entirely supplanted the protective and benevolent associations through which individuals once customarily secured themselves against risk. Mediating functions of churches, eleemosynary institutions, fraternal organizations, and extended families have been progressively enfeebled by legislation and judicial decision.

The justification proffered for virtually every expansion of the protective state is concern for the rights and interests of the individual. But to atomize persons by artificially separating them from the human-scale structures within which meaningful lives can be lived does them questionable service. Nancy Cruzan is not the only one who is disadvantaged by being made a ward of the state.

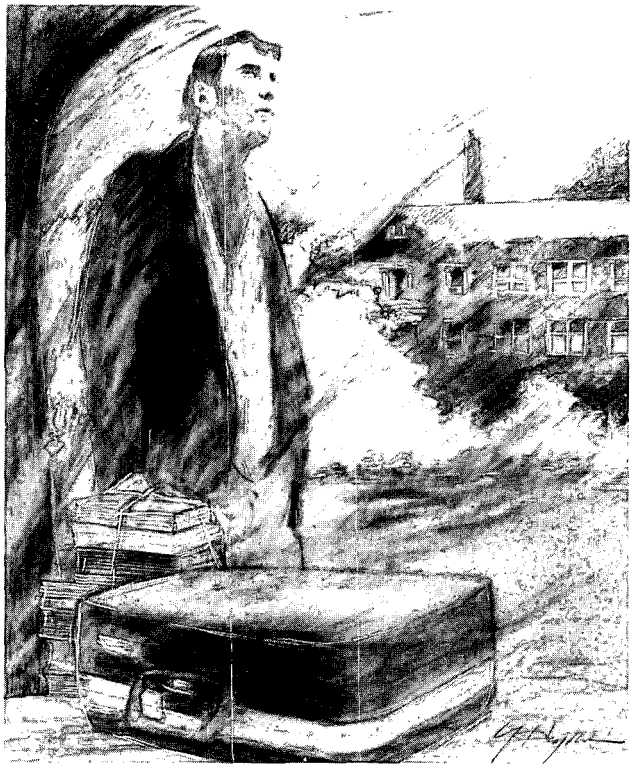
Contributing Editor Loren E. Lomasky is professor of philosophy at Bowling Green State University in Ohio and author of Persons, Rights, and the Moral Community.

BLOCKING THE LIGHTS

BY DAVID BERNSTEIN

Despite all the talk about "a thousand points of light," it can be tough to be a Good Samaritan these days—especially if the people you want to help have AIDS. Ask Charles Baxter.

The difficulties he encountered in trying to open a hospice in Belleville, Illinois, are typical of the obstacles faced by dozens of individuals and groups across the country seeking to provide housing for people with AIDS. In addition to the inevitable fund-raising problems that novel charities face, they more often than not encounter community hostility and political interference when they announce their plans.



Baxter, a home health-care provider for 15 years, became aware of the terrible housing crisis that faces many terminally ill AIDS patients after caring for several clients with the disease. He told the *Chicago Tribune:* "For eight or nine months, I was working with AIDS patients in their homes. With one of my patients, there were 26 family members around him when he died. I couldn't help but think that by comparison, there are people who have no one around them when they die, and I decided to start the home."

Baxter sold his car, his pickup truck, some antiques, and his house to get enough money to rent and remodel a three-story house, which he named "Our Place." He also received help from community volunteers. By early 1989, he had found three people who were HIV-positive, homeless, and ready to move into Our Place. He hoped eventually to house up to seven residents.

All Baxter needed was approval for a special-use permit from the Belleville City Council. The Belleville zoning board seemed receptive to the idea of a hospice for the dying until it discovered that Our Place was meant for AIDS patients. Then the board voted unanimously to recommend that the city council deny Baxter's request. Opponents of the project voiced fears that the hospice would hurt property values and lead to the spread of AIDS in the community. In the end, the council voted 9-7 to deny the permit, although it was unable to cite any specific zoning provision to support its decision.

With the assistance of the American Civil Liberties Union, Baxter filed a suit under federal civil-rights statutes, alleging that the city of Belleville had engaged in discrimination against the handicapped. U.S. District Judge William D. Stiehl found that the potential residents of Our Place posed no threat to the health of the surrounding community and that "irrational fear of AIDS was at least a motivating factor in the City's refusal to grant Baxter's special use permit....The court finds that the public interest can best be served if discriminatory actions based on irrational fears, piecemeal information, and 'pernicious mythologies' are restrained." Stiehl ordered the city to allow the hospice to open and to pay Baxter $29,000 in damages.

But the story does not have a happy ending. Baxter finally opened Our Place in November 1989. He closed it two months later. He said he was emotionally and physically drained and that he had difficulty raising money. To add insult to injury, the Illinois attorney general is investigating whether Baxter failed to file the forms required by the state's charitable trust laws.

Very few individuals would have the fortitude to make it even as far as Baxter did. Care for AIDS victims is an expensive and complicated matter.

At different stages of the disease, victims have varying needs for care. Those who temporarily recover after hospitalization merely need a place to live. Many can return to where they lived before or stay with friends or relatives. But others, jilted by lovers, abandoned by family and friends, and broke and jobless after a long hospital stay, have nowhere to go and find themselves homeless or on the verge of homelessness.

Those who are suffering the ravages of AIDS but are not in the terminal stages of the disease need help with feeding, bathing, and other basic activities. Often friends and lovers help, but the strain is frequently too much for them to handle without professional home health-care assistance, which is beyond the financial means of many AIDS patients.

People in the terminal stages of AIDS need constant attention. Often they are lucid for only part of each day, and they

YVETTE M. HEYDEN

rely completely on the care of others. Many of these patients wind up in hospitals, which are not equipped to deal with them appropriately.

In response to these problems, charitable organizations, gay community groups, religious organizations, and an occasional heroic individual such as Charles Baxter have tried to provide appropriate accommodations for people with AIDS. For those who are able to care for themselves, group homes have been organized with rent based on ability to pay. Other organizations have established nursing homes or adult day-care centers for AIDS patients in need of more attention.

Still other groups have set up hospices where AIDS patients can live out their last days with dignity. Because hospices, unlike hospitals, are constructed to care for, rather than treat, the dying, terminally ill patients often find them far more congenial. And hospice care is not only better for the patients, it is more efficient, costing only one-tenth to one-third as much as hospital care (which is usually at public expense).

Despite the benefits of AIDS hospices, those individuals and groups who have taken up the burden of providing housing and care for AIDS patients must fight community opposition and government roadblocks, even when the facilities they plan are desperately needed. If land-use rules are not sufficient to stop AIDS care facilities, demagogic politicians may try other means to get rid of unwelcome AIDS hospices.

When the Monastery of the Glorious Ascension, an Eastern Orthodox monastery in Whitfield County, Georgia, opened a 15-bed AIDS hospice over community opposition in 1989, the Whitfield County Commission approved a resolution asking residents not to donate money to the hospice or volunteer there. When that gentle persuasion didn't close down the hospice, the county tried a more coercive approach. The Whitfield County Solid Waste Management Facility stopped accepting trash from the monastery, claiming that adult diapers, rubber gloves, and other material from the hospice constituted hazardous "medical waste."

Father Damien, abbot of the monastery, pointed out that his monks follow waste-disposal guidelines set forth by the Centers for Disease Control and that the monks have agreed to follow guidelines set by landfill officials. While landfill officials denied any political motivation for the waste ban, the hospice's lawyer called the landfill's decision to refuse the waste "blatantly discriminatory."

Even when local officials cooperate, the task of those who find housing for AIDS is complicated by community opposition. A chant at a 1988 rally against a planned AIDS-patient nursing home in Wanaque, New Jersey, summed up the typical attitude: "NIMBY" (Not In My Backyard).

The Catholic Church, which runs many AIDS hospices, has learned the hard way that community fears must be taken into account when planning a hospice. In 1985, when the Archdiocese of New York announced plans to open a hospice on West 98th Street next to the parish parochial school, local residents responded with anger, fearing that their children would somehow catch AIDS from the hospice. Parents of children attending the school picketed the sponsoring church, and the archdiocese reluctantly decided to set up the hospice elsewhere. Since then, the church has steered clear of hostile communities when planning its hospices.

Other groups have decided to face down local opposition. In Seattle, a nonprofit organization called AIDS Housing of Washington has received permission from the city hearing examiner to build a 35-bed, $7-million AIDS hospice in a business district, despite the protests of local businesspeople. The hospice would provide not only beds for dying patients but also adult day care for those who would otherwise have to be placed in nursing homes.

Opponents, however, were not cowed by the group's initial victory. They have so far filed two appeals claiming that the hospice does not belong in a business district, that if it does locate in a business district there should be retail space on the ground level, and that the hospice would not provide enough new parking spaces to meet its demand. One local businessman told the mayor and city council that "like it or not, most people do not wish to be around ill people often, and here we may be adding the sorts of behavior sometimes associated with AIDS—overt homosexuality, dementia, and drug abuse."

Proponents of the hospice responded that terminal patients would be confined to the building and that day-care patients would arrive and depart by shuttle. Moreover, the hospice would actually benefit nearby businesses. It would occupy a vacant lot and draw visitors who might patronize local shops and restaurants. Despite the continuing controversy, AIDS Hospice of Washington plans to break ground this fall.

To avoid the problems encountered by so many AIDS care facilities, some AIDS housing groups who have the local government's tacit cooperation and support simply do not inform the neighbors of their activities. Damien Ministries oversees five group homes in Washington, D.C., and two in suburbs of Chicago. The organization rents each house to between three and seven people who are HIV-positive. They then form a mutual-support group. To head off community antagonism, Damien keeps a low profile while searching for appropriate sites and does not notify neighbors when it sets up a group home.

Eventually, the neighbors find out, but by then the residents are already well established. The misconceptions and fears that neighbors usually have about AIDS homes—ambulances arriving at all hours, drug abuse on their lawns, wild homosexual activities—have already been dispelled, so the neighbors do not object. Other AIDS housing groups, from New York to Los Angeles, follow a similar strategy of anonymity.

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grow. In many major cities a large percentage of hospital beds are already taken up by terminal AIDS patients, even though the hospitals can do nothing for them. They simply have nowhere else to go.

Fortunately, the hospice movement and other AIDS housing efforts are expanding rapidly. Their pioneering efforts will smooth the way for similar endeavors by others. As AIDS becomes more common, and as more Charles Baxters win lawsuits, public hostility to AIDS facilities will begin to peter out.

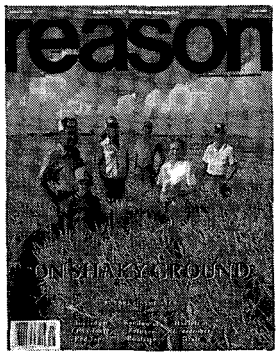
Decades ago, tuberculosis hospitals faced similar opposition. At first, some judges upheld restrictions aimed at such hospitals on the grounds that they constituted a public nuisance because they generated fear in the community. Eventually, however, the courts began to base their decisions on scientific reason, rather than the emotions of local residents. Tuberculosis was the cause of one out of every seven American deaths, and the need for sanitariums began to outweigh claims of fear.

In 1921 a California court ruled that "a well-maintained, modern hospital, even one for the treatment of contagious and infectious diseases, is not...a menace, but, on the contrary, one of the most beneficent of institutions....There is not the slightest danger of the spread of disease from it, and this is the only possible ground on which objection could be made to it. We have no hesitation in holding an ordinance prohibiting the maintenance anywhere within a city of an institution so necessary in our modern life and so beneficent to be wholly unreasonable."

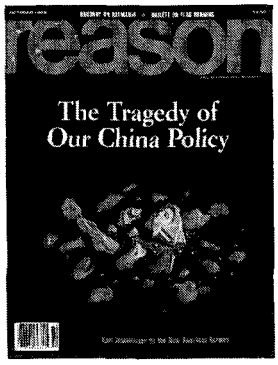
That wisdom applies with equal force to the AIDS housing situation, and modern civil-rights statutes lend the argument even more legal weight today. Given time and a few more court battles, people will come to recognize that they cannot use their own irrational fears to restrain the compassionate efforts of their fellow citizens.

David Bernstein is a student at Yale Law School and an adjunct fellow at the Manhattan Institute for Policy Research.

"Government agents befriended traders, visited their homes, and shared their meals. They attended their parties, played with their children, and won their trust. They deluded the defendants and then ensnared them in order to prosecute them for the moral equivalent of jaywalking."
—TRADER X, "SNARING THE CHICAGO 46"



"Every five years in Peru we have elections. We elect a dictator every five years. You've confused it with democracy, and so have we."
—HERNANDO DE SOTO, "WHAT'S WRONG WITH LATIN AMERICAN ECONOMIES"



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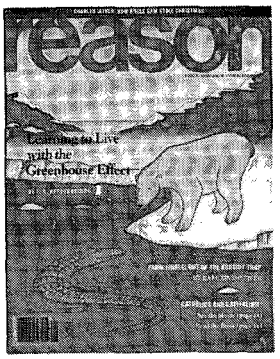
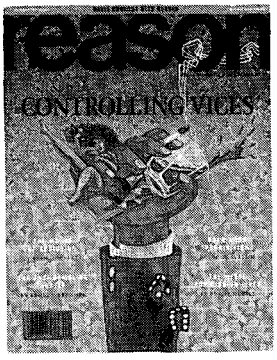


"For all the right-wing grousing about Washington and the majesty of the government 'closest to the people' (yeah, like right inside their wallets), state and local governments in America are notoriously shady enterprises, demonstrating the twin evils of local monopoly and a cozy-*with-the-powers press.*"
—THOMAS W. HAZLETT, "LOCAL HEROES"



"When the law determines vice and virtue, everyone competes to determine the law. We end up with a struggle between those who can't tolerate the idea that anyone anywhere is having fun and those who can't tolerate the idea that anyone anywhere disapproves of their fun."
—VIRGINIA I. POSTREL, "SIN AND DECADENCE"

"Dr. Ehrlich was an entomologist by training, and some immediately recognized that after many years of rigorous study, he had lost the capacity to distinguish between an army of hideous little arthropods swarming over his desk in a Stanford laboratory and an upwardly mobile population of Homo sapiens building tract houses in Palo Alto."
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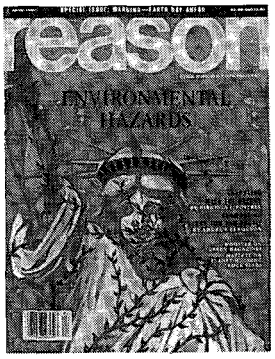

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TURNING BACK THE CLOCK

BY THOMAS J. DILORENZO

In a move that could ultimately cost Americans millions of dollars, the U.S. Supreme Court ruled in April that state governments and private parties can challenge mergers that have been approved by the Federal Trade Commission and the Justice Department's Antitrust Division. The decision strengthens the hands of state attorneys general, such as California's John Van de Kamp and New York's Robert Abrams, who aggressively attack corporate mergers.

The Court's ruling came in *California v. American Stores*. In 1988, Van de Kamp filed an antitrust suit against American to keep it from merging with Lucky Stores Inc., another large California chain. Since the FTC had approved the merger, American urged the court to dismiss the suit, arguing that Van de Kamp didn't have legal standing to prevent the merger. But Van de Kamp argued that state antitrust laws gave him the authority to challenge the merger, and 32 other state attorneys general filed friend-of-the-court briefs agreeing with him.

Van de Kamp's suit alleged that the merger would give American too large a share of the California grocery market, allowing it to charge monopoly prices for food. Van de Kamp ignored an FTC finding that the California market would remain competitive and that the merger would actually allow the firm to lower food prices.

He based his suit on the "market concentration doctrine"—which holds that a large market share by one or a few firms proves that those firms have monopoly power. For much of this century, this doctrine guided antitrust policy. But in the last 30 years, voluminous research has led antitrust economists to reject the doctrine. Today, an economist who believes that market concentration necessitates monopoly power is like a geographer who believes the earth is flat. Unless new companies can't enter the market because of legal barriers, such as licensing requirements, economists now believe, firms can maintain a large market share only by effectively satisfying their customers. Far from ripping off consumers, these businesses demonstrably serve them well.

A competitor griped that Red Food's "stiff competition...led to price wars." One result: milk for 19 cents a gallon.

This implies that antitrust policies that break up firms merely because they are large or "dominant" are grossly misguided. Such policies punish competitive success and stifle productivity.

The Reagan administration's antitrust enforcers took account of these findings. A large market share was usually not a sufficient reason to prosecute a firm. Indeed, unless there was proof that consumers had been harmed, Reagan officials usually assumed that a firm gained a large share of the market by out-hustling its competitors.

Sadly, George Bush's antitrust enforcers seem to see Van de Kamp as a better model than their predecessors in the Reagan administration. Recent FTC actions against the Red Food grocery store chain in Chattanooga, Tennessee, provide an example of the kind of nonsense that passes for antitrust action under the Bush administration.

In early 1989 Kroger decided to shut down its seven unprofitable Chattanooga stores, and Red Food offered to purchase them. The FTC challenged the sale, arguing that because Red Food already had 60 percent of the market, it was a "dominant firm" that monopolized the local market. "Competition and low prices," the FTC charged, "keep new supermarkets out of the city."

The FTC ignored the entry of two large, national grocery chains—Bruno's and Food Max—into the Chattanooga market in the preceding two years. Bruno's and Food Max are, respectively, four and seven times larger than the Red Food chain. The commission also overlooked the fact that such grocery giants as A&P, Winn-Dixie, and Giant Foods, among others, had entered the Chattanooga market during the past 30 years (some have since left). Obviously, there are no significant entry barriers to protect a grocery store monopolist.

In a highly revealing statement, the vice president of a competing grocery chain told a federal district court that he objected to Red Food's "stiff competition and low prices," which have "led to price wars, giving way to such deals as 19-cents-a-gallon milk." Because of Red Food's size (55 stores), he argued, it has "advantages over smaller stores," such as being able to spread the cost of a $5,000 advertisement over a large number of stores. He requested that the government protect him from such competition.

Fierce competition has forced Red Food into a low-margin/high-volume strategy. As Georgia Tech marketing professor David C. Allvine testified, "Red Food's strategy has been one of sacrificing profit to maintain their sales volume and low prices....That makes them vulnerable because they must maintain high volumes."

The facts supported Allvine's interpretation. Red Food's return on equity was one-third less than that of its two top competitors—Bruno's and Food Lion. While Red Food may have held a large share of the market, it was in no position to gouge consumers.

TRUSTBUSTERS

Indeed, looking at the evidence and not a discredited theory, the Chattanooga grocery market seems quite competitive. In the fourth quarter of 1988—the last before the FTC action—a Chamber of Commerce Researchers Association survey showed that Chattanooga's food prices were 8.8 percent below the U.S. average. Chattanooga had the sixth lowest food prices of the 188 cities surveyed.

U.S. District Judge Orinda Evans saw through the FTC's specious claims and permitted the sale of the Kroger stores in May 1989. "The FTC has not shown a likelihood that Red Food, if it acquires the Kroger stores, will be able to exercise market power," the judge ruled. She also noted that the sale would save 400 jobs. The FTC lost on appeal.

But the FTC wouldn't take no for an answer. In February, Red Food signed a consent agreement with the commission. As the result of what sounds suspiciously like a gun-under-the-table "negotiation," Red Food agreed to sell six of its stores, including four of the ones purchased from Kroger; to sell the stores only to FTC-approved purchasers; to allow the FTC to appoint a trustee to sell the stores if it cannot sell them by December 31; and to get FTC approval before buying any stores in Chattanooga for the next 10 years.

The Chattanooga grocery market will become less competitive because the feds have crippled one of its strongest firms. Red Food's competitors—and other businesses—have learned a lesson that will not serve their customers well: Don't cut prices too much, or the government will drag you into court.

The tough talk by federal antitrust officials and the recent Supreme Court ruling signal a retreat from economic common sense in the antitrust arena. By focusing more on abstract measures of concentration than on competitive realities, the new federal antitrust officials and the newly empowered state attorneys general are about to turn back the antitrust clock, to the detriment of consumers.

Thomas J. DiLorenzo is the Scott L. Probasco, Jr., Professor of Free Enterprise at the University of Tennessee, Chattanooga.

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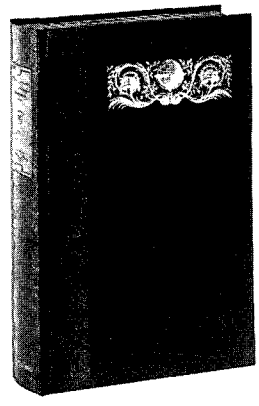

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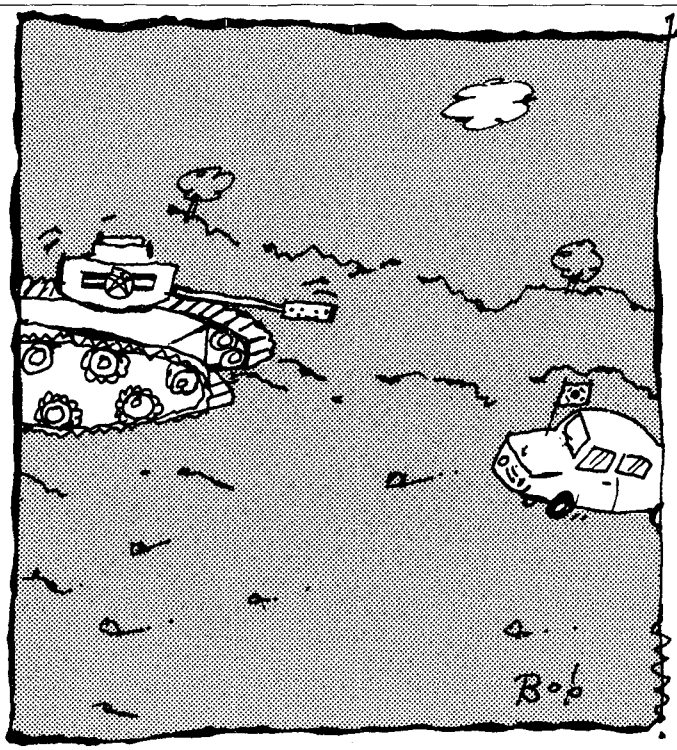
PROTECTION RACKET

BY MARTIN MORSE WOOSTER

Now that the Berlin Wall has fallen and communism has retreated, there seem to be very few dragons left for the United States to slay. True, Saddam "Beast of Baghdad" Hussein has some potential as a villain. But many commentators have decided that, with the Soviets down for the count, the chief threats to America will be economic, not military.



From Anthony Harrigan on the right to Kevin Phillips and Robert Kuttner on the left come shrill claims that Japan and Europe are about to gang up on us, turning the United States into an economic colony of Tokyo and Bonn. Indeed, some frantic commentators (such as John Judis) have concluded that anyone who is opposed to protectionism must be in the pay of the Japanese government.

It is amusing to see liberals searching for Japanese influence with a fervor equal to that of their counterparts on the right, who once held a contest to find the swarthy paymaster in the ill-fitting Bulgarian suit whom everyone knew was doling out gold rubles to the Institute of Policy Studies from a faded Gladstone bag. Both the left and the right falsely assume that anyone who disagrees with them must have been paid off by malign forces.

To suggest that overseas multinationals are as much of a threat to America as the dictators of the past is to argue that a salesman is the moral equivalent of a tyrant. How many divisions do the Japanese car companies command? Yet a rising number of pundits are rattling their sabers and calling for economic war.

Some commentators observe the rise of "geoeconomics" without endorsing protectionist schemes. "Everyone, it appears, now agrees that the methods of commerce are displacing military methods," contends Edward N. Luttwak of the Center for Strategic and International Studies in the summer issue of *The National Interest*.

Other observers are more bellicose. Perhaps the noisiest is a mandarin named Ronald A. Morse, who told Ian Buruma of *The Spectator* that "Japan, a nation without principles or values, cannot lead the world." Not only is Japan a "predator," Morse said, but "if you defect to the Soviet Union you can get shot, but if you defect to Mitsubishi you can get rich."

But, as Buruma notes, while the chief export of the Soviet Union until recently was the arms race, foreign corporations have made inroads into the American economy not by guile or conquest but by selling well-made goods at reasonable prices. "Is a Japanese company that provides jobs in America and good, cheap products to boot, good or bad for the national interest?" Buruma asks.

In a hard-hitting column in the July 16 *Business Week*, Princeton economist Alan S. Blinder adds that our trade deficit with Japan equals 1 percent of the U.S. gross national product: Even if that deficit were closed through protectionist action, Blinder argues, low American unemployment rates ensure that "there would not be more American jobs if our trade were balanced—there would just be different jobs."

Neither Buruma nor Blinder analyze why so many pundits and terrified CEOs fret so much about foreign competition, but there are several explanations. First, there is the fundamental law of public-choice economics, the rule that advocates of government largess usually fight harder for their subsidies than foes of such spending battle for reductions, because each consumer of government pork stands to gain more from a benefit than a taxpayer or consumer would stand to gain if the entitlement were eliminated. Unionized auto workers who make $40,000 a year from protected jobs are far more effective than the millions of consumers who would save $1,300 on a new Japanese car (according to a 1984 Federal Trade Commission study) if import quotas did not exist and foreign car makers were free to compete.

Second, advocates of government expansion always like to inflate the harm an "enemy" might cause. When Robert Kuttner creates scary myths about foreign capitalists as justification for a Mussoliniesque industrial policy, he is using the same tactics William Bennett uses to defend the war on drugs or the Pentagon employs to justify the defense budget.

As *Newsweek* reporter Bill Powell observes in the August *Business Month*, most commentators simply refer to "the

BOB ECKSTEIN

Japanese" when they should be referring to individual Japanese managers. For example, few know who the president of Honda of America is, even though Honda now makes and sells more cars in the United States than Chrysler does. Japan's success in America, Powell says, is due not to the Buddhist work ethic or low wages but simply to basic skills "that ought to be familiar to U.S. managers: motivating employees, balancing production lines, working closely with suppliers."

In an accompanying article, *Business Month* staff writer Alex Prud'homme interviews five heads of the American branches of Japanese corporations. Far from being drones or America-haters, most of these CEOs like America, and some of them prefer the United States to Japan. Most of the CEOs Prud'homme interviewed displayed the sort of old-fashioned reticence that was characteristic of business leaders in the days before some decided that self-promotion was more important than making good products.

Prud'homme did meet one fireball, however: Toyota of America CEO Yukiyasu "You can call me Yuki" Togo. Togo, who says his goal in life is to "sell like hell," practices what he preaches; he once shaved his head and spent two weeks in a Buddhist monastery in Thailand in order to convince anti-Japanese Thais to buy Toyotas. Togo, "who seemed to be powered by a small nuclear reactor," says that his countrymen frequently accuse him of being an American, a label he likes.

Not all protectionists are anti-Japanese. Institute of Policy Studies fellow Richard Barnet, for example, contends that the real enemies of America are not the Japanese, but multinational corporations. Capitalism, Barnet tells the readers of the July 16 *New Yorker*, is the only "global-economic faith" in the world. (Did the IPS staffers wear black the day socialism died?) But corporations, Barnet was shocked to learn, don't necessarily do what governments tell them to do. They shift factories to the Third World! They ally with foreign competitors! The "great global corporations," Barnet says, "are becoming less and less accountable to the people whose lives they change." Because multinationals are, in Barnet's eyes, maleficent, they should be "restrained" (in a way Barnet never makes clear) by the state.

Barnet has been campaigning against multinationals since most REASON readers were in high school, but he has never been able to show why they are wicked. Corporations, Barnet says, "make the key decisions—about what people eat and drink, what they read and hear." But he gives no indication of how these multinationals are able to force people to buy their products. Moreover, we live in an age where economic power is both concentrating and diffusing. Large corporations are becoming larger, but their size makes them more sluggish and more vulnerable to entrepreneurial initiative.

Health food companies succeed by providing tastier alternatives to major brands; dozens of microbreweries produce the fine beer that large American breweries do not choose to make; and the market offers dozens of alternatives to the magazines published by international conglomerates. If global megacorporations successfully control American choices in reading matter, why has the *Utne Reader* captured nearly 200,000 subscribers? Although he is not, strictly speaking, a protectionist, Barnet's arguments have to be refuted because they draw on common fears that protectionists exploit in their crusade against "foreign" corporations.

Two other articles provide additional intellectual ammunition for the free trader. In the winter 1990 *International Organization*, Harvard scholars Dennis J. Encarnation and Mark Mason examine the history of foreign investment in the Japanese economy. They conclude that nearly all the gains American corporations have made in the Japanese market have come about because of pressure from business, not government.

In the late 1950s, for example, IBM was the first major American corporation to capture a large share of a Japanese market, but it insisted that the U.S. government stay away from the negotiations. When DuPont built its first Japanese plant, its chief negotiator "openly complained that the staff of the U.S. Embassy remained patently unhelpful (if not harmful)" during the negotiations. In this light, those who advocate a greater government role in U.S.–Japanese trade negotiations should ask why the government can "help" now when it did little good and some harm during the past 40 years.

The best piece to appear about trade so far in 1990 is an article by American Enterprise Institute fellow Irwin M. Stelzer in the July *Commentary*. Stelzer offers a primer on all the arguments protectionists bring up, convincingly showing that protectionism does not create jobs or ensure the successful birth of "infant industries." Stelzer is particularly good at explaining the statistical problems with calculations of the U.S. foreign debt. While American corporations bought most of their foreign holdings years ago, Stelzer argues, their foreign counterparts have acquired American properties more recently. Because corporations value these holdings on their books at the price they paid for them, the nation's net foreign debt seems higher than it actually is.

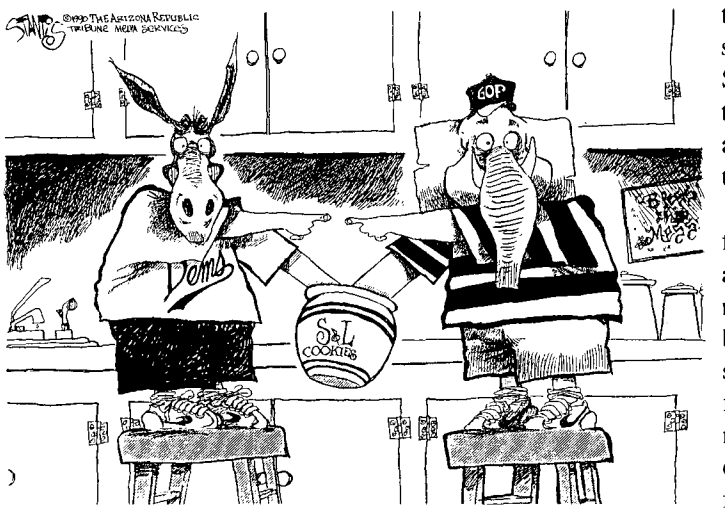
But the strongest refutation of protectionism is a practical one. Why, one should ask, are foreign corporations bad? Is Baskin-Robbins ice cream less tasty because it has been owned by the British conglomerate Allied-Lyons? Are Doubleday books less readable now that they are owned by West Germany's Bertlesmann? If companies produce goods people want, they will succeed; if they produce goods no one wants, they will fail. Even the Japanese can fail spectacularly in the American market. Remember the Infiniti?

When buying goods, the rule should be "buy what you like," not "buy American." Wrapping a product in the Stars and Stripes is a very easy way to hide a multitude of sins.

Martin Morse Wooster is the Washington editor of REASON.

SHARPEN UP THE SHEARS

BY TOM MILLER



On January 10, 1989, shortly before unveiling the Bush administration's plan for bailing out the bankrupt Federal Savings and Loan Insurance Corp. (and the hundreds of insolvent savings and loan institutions FSLIC "insured"), Treasury Secretary Nicholas Brady told congressional leaders that "curtailing deposit insurance is not an option and will not be considered."

Since then, cost estimates for the total S&L bailout have ballooned—to well over $2,000 for every U.S. taxpayer—with no end in sight. Federal Deposit Insurance Corp. chairman L. William Seidman has warned Congress that the deposit-insurance fund for banks is "under great stress" as well. Not only are taxpayers being billed for the mistakes of the past, they remain on the hook for future loan losses by banks and thrifts. Until the current structure of unlimited, flat-rate deposit insurance for all comers is changed, taxpayers will remain vulnerable.

While the dare-to-be-cautious Bush administration prepares to release its reform recommendations after the November elections, other policymakers and financial analysts are stepping forward with calls for taxpayer protection and marketplace discipline. Within the financial industry, William Randall, chief executive of First Interstate Bank of Arizona, has proposed cutting back deposit-insurance coverage levels to somewhere between $50,000 and $75,000. (An estimated 98 percent of all deposit accounts have balances of $20,000 or less.)

Regional Federal Reserve Banks in Cleveland and Minneapolis have offered "coinsurance" plans. This approach would reduce the maximum size of deposits receiving 100-percent coverage (to $10,000 under the Minneapolis plan and $25,000 in Cleveland's version). Higher balances would receive 90-percent coverage under the Minneapolis proposal. The Cleveland plan would establish a sliding scale of 90-percent, 80-percent, and 70-percent coverage.

On Capitol Hill, House Banking Committee Chairman Henry Gonzalez (D-Tex.) has indicated that he intends to protect taxpayers from the risky lending encouraged by the deposit-insurance system. During a February 14 hearing, he called deposit insurance "government guarantees for the most affluent of society" and urged consideration of private insurance, "particularly for high-risk activities and for extended coverage beyond that provided by the federal insurance funds." Sen. Alan Dixon (D-Ill.), who heads the Senate Banking Subcommittee on Consumer and Regulatory Affairs, has advanced a proposal to generate "risk-based" insurance premiums by having the FDIC "reinsure" a small share of its portfolio in the private insurance market.

Perhaps the most popular deposit-insurance reform among lawmakers would limit coverage to $100,000 per person, instead of per account. Under the current system, a depositor can obtain virtually unlimited insurance by maintaining multiple accounts at different institutions. Even Treasury Secretary Brady has hinted that "if you were going to start any place, that would be a place to start."

These proposals would force sophisticated investors and large depositors to monitor the health of their banks and S&Ls. Financially shaky banks will find it difficult and expensive to attract new funds or retain old accounts. This in turn would force regulators to intervene more promptly and head off further losses in insolvent operations.

These reform proposals all focus on tightening the explicit limits on deposit insurance. But one of the biggest obstacles to reform is the informal "too big to fail" policy, which provides de facto coverage for virtually *all* deposits, whether officially insured or not. Although the law does not mandate protection for unsecured creditors or for deposits over $100,000, the FDIC has a long history of bailing out nearly everyone. Changing this approach is a necessary condition for successful reform. All the other reform ideas will come to nought so long as the too-big-to-fail policy remains in place.

Instead of simply closing a bank and paying off insured depositors (which would impose losses on uninsured large depositors and unsecured creditors), the FDIC prefers to arrange for another ostensibly healthy bank to accept all of the deposits of a failed bank and purchase some of its assets. It then negotiates a cash payment to cover the difference between the two.

In the 1980s, the FDIC briefly experimented with "modified payoffs" that imposed losses on uninsured deposits. But it abandoned the practice when Continental

Illinois National Bank failed in 1984; all of the bank's uninsured depositors and unsecured creditors were protected. Since then, the FDIC has insisted that failure of any large bank creates so much administrative complexity and financial instability that the government must protect all depositors.

Complaints that this policy discriminates against smaller institutions have led the FDIC to extend 100-percent coverage to vitually all banks and thrifts. Since 1985, the FDIC has protected 99.5 percent of the value of uninsured deposits in all closed banks. Similarly, it has provided coverage to 99.97 percent of the $62 billion in deposits in failed S&Ls since it took over these duties from the FSLIC in August 1989.

FDIC officials argue that it's nearly always cheaper to pay new investors to take over a failed bank than to shut it down and pay off the insured depositors. But such short-term cost calculations ignore the long-term impact of this policy. As the Bush administration's own fiscal year 1991 budget proposal concluded, such 100-percent de facto insurance "decreases the incentive of uninsured parties to monitor risk-taking, allowing depository institutions to take more risk and increasing the insurance funds' exposure to loss." Indeed, FDIC Chairman Seidman noted last February that "the bulk of the FDIC's costs have been incurred in large bank failures" and conceded that "costs to the insurance fund could be reduced if there is a willingness to inflict losses on large depositors."

In a report submitted to the Treasury Department last March, the American Bankers Association rejected the too-big-to-fail policy. "In a full protection environment, financial soundness is too dependent on regulatory agency performance, and as the thrift crisis demonstrated, regulatory agency performance may not be wholly reliable." The ABA complained that "current FDIC policy short-circuits market discipline in the most important place it can be applied—the market for uninsured deposits." It concluded that de facto 100-percent insurance "has made it too easy for institutions that do not manage risk effectively to attract deposits."

The ABA proposed a new regulatory procedure termed "final settlement payment." Under this proposal, the FDIC would subject the uninsured depositors and other general creditors of *all* banks and S&Ls to a fixed, known-in-advance loss of about 12 cents on the dollar. This "haircut" amount is based on the FDIC's average recovery rate on assets in failed banks, which has been about 88 percent in recent years.

Revoking the "too big to fail" policy would alert uninsured depositors that losses are unavoidable in a bank failure and increase the pressures for sound banking.

The ABA mandatory haircut approach would alert uninsured depositors and unsecured creditors that losses are unavoidable in a bank failure; enable them to know in advance the magnitude of the loss; ensure that no bank will ever be more attractive solely because of its size; and increase the pressures for sound banking. "If investors in uninsured deposits are required to absorb their share of losses, they will do more to prevent them," the ABA report concludes.

The banking industry, of course, is under great competitive pressure these days and sees direct advantages in placing new limits on the federal safety net. As the ABA report notes, the expansive deposit guarantee "contributes to the perception and treatment of commercial banks as public utilities." Government protection of uninsured deposits requires ever-increasing worldwide regulatory intervention to control excessive risk taking.

Without some form of mandatory haircuts for uninsured depositors and creditors, other deposit-insurance reforms will either prove illusory or be blocked politically by smaller banks lamenting the "unfairness" of special treatment for large banks. The true test of the Treasury Department's forthcoming deposit insurance report will be the way in which it deals with the too-big-to-fail policy.

Unfortunately, other major participants in the interagency study coordinated by the Treasury Department have already backed away from reforms relying on marketplace discipline for uninsured depositors. Last July, Federal Reserve Board Chairman Alan Greenspan told the Senate Banking Committee that such reforms "raise serious stability concerns" and that the board considers increased capital standards and improved supervision more promising approaches. Later that month, FDIC Chairman Seidman complained to the same committee that the ABA approach would reduce the FDIC's "flexibility" in dealing with failing institutions.

What remains undeniable is that the current system of deposit insurance has failed miserably and at great expense to taxpayers. Most of the taxpayer losses suffered in the thrift industry debacle are irreversible, but future losses in the troubled banking sector can still be headed off by prompt reform.

Two factors will keep driving reluctant Washington politicians toward reform of deposit insurance. First, the unprecedented costs of the current S&L bailout are energizing taxpayers and making officials fearful of asking for more money to cover additional losses. Second, increasing competition from other international and domestic financial intermediaries makes fundamental restructuring of the U.S. financial system an urgent necessity in 1991. But expansion of bank powers across geographic and product barriers will require the political quid pro quo of new limitations on the deposit-insurance safety net. Without the assurance of market-driven haircuts on excessive risk takers, taxpayers will refuse to be scalped again.

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Poor Man's Choice

BY MARTIN MORSE WOOSTER

Politics, Markets, and America's Schools, by John E. Chubb and Terry M. Moe
Washington, D.C.: Brookings Institution, 307 pages, $28.95/$10.95 paper

Longer school years, smaller class sizes, and more money per pupil have little effect on high school achievement; the autonomy of teachers and principals does.

Throughout the 1980s, the debate about education reform in the United States generated more heat than light. Most proposals were not useful, and some appear to have done more harm than good. Despite all the commissions and all the reports produced in the last decade, spending on American high schools increased, while test scores fell.

But in the late 1980s, several books showed that the key to a successful high school is autonomy. High schools that have principals who are freely able to implement their authority and teachers with a substantial say in what and how they teach tend to produce better students than schools where the principal acts as a middle manager and teachers are chained to a curriculum prepared by the central office. These conclusions have been reached by neoconservatives (James Coleman and Thomas Hoffer in *Public and Private High Schools*, 1987), conservatives (Gerald Grant in *What We Learned at Hamilton High*, 1988), and liberals such as John E. Chubb, a Brookings Institution senior fellow, and Terry M. Moe, a Stanford University political scientist.

Most of the reforms the authors propose in *Politics, Markets, and America's Schools* are not new. They do not differ in substance or nature from the decentralizing strategies proposed by Christopher Jencks and his allies at the Office of Economic Opportunity in the early 1970s. Moreover, the authors' public-school choice plan does not go as far as education vouchers, which have been advocated both by conservatives (chiefly at the Heritage Foundation) and by such liberals as Berkeley law professor John Coons.

But the publication of a book such as this by the prestigious Brookings Institution dramatically changes the nature of the education debate. *Politics, Markets, and America's Schools* was the subject of major articles in the *New York Times* and the *Washington Post*; a summary of the book by Chubb occupied most of the op-ed page of the *Wall Street Journal*. If Chubb and Moe worked for a conservative organization, they would not have received such attention.

Producing *Politics, Markets, and America's Schools* took the authors several years. As early as 1983, Chubb and Moe decided to expand the High School and Beyond data base (the largest set of data about American high schools) to look at how schools were organized. They sent out surveys, which were returned by 402 principals and 10,370 teachers throughout the United States. The authors then fed the data into their computers, crunched numbers, and produced this book.

Like most social science, *Politics, Markets, and America's Schools* is better at analyzing what doesn't work than at explaining what does. The authors are most persuasive in showing that all the changes proposed by Secretary of Education Terrel Bell in 1983 and 1984 were at best ineffective and at worst wrongheaded. Lengthening the school year, imposing stricter graduation requirements, and reducing class size, Chubb and Moe found, had little effect on high school achievement. The amount of money spent per student also made little difference; a good school was as likely to be found in the inner city as in a wealthy suburb.

And some "reforms," Chubb and Moe argue, make matters worse: Raising certification requirements for teachers (either through mandating more courses

BUZZ FREITAG

or requiring national examinations) ensures that more good students will choose other careers because they are unable to stand the mind-numbing rigmarole of schools of education.

What does make a good high school? The authors found that schools where teachers and principals had a considerable degree of autonomy tended to produce better students than schools where staff freedom was checked by unions or by the central office. In 61 percent of the ineffective schools surveyed, unions restricted the principal's ability to fire teachers; only 21 percent of the effective schools had similar union controls. In ineffective schools, school boards had an above-average influence on curriculum 59 percent of the time; in effective schools, only 43 percent of the school boards had a similar influence.

To remove the bureaucratic barriers that ensure bad schools, the authors call for public-school choice. They support this reform for both Gorbachevian and Maoist reasons. For Chubb and Moe, turning high schools into a socialist marketplace is a form of *perestroika*—removing entrenched central planners, smashing existing hierarchies, and transferring power from the central office to principals and teachers. Like Mao, the authors see choice as a form of permanent revolution: Choice, they feel, is the only reform that will ensure that bureaucrats and unions cannot regain their former clout. Only by destroying the power-centralizing mechanisms that have governed public schools for most of the century, they argue, can American education be successfully reformed.

But in calling for public-school choice, Chubb and Moe rely not on their statistical evidence but on theories about the nature of bureaucracies that build on the work of James Q. Wilson. Such theories, while interesting and persuasive, are not facts. It is possible, applying a different theory (such as school-based management), to construct a public-school system that would provide principals and teachers with the autonomy they need while avoiding choice entirely.

Furthermore, the authors propose a top-down method of implementing choice. Parents in the Chubb-Moe system would go to a "Parent Information Center," read descriptions of schools, and register for the ones they want. Once the parents' choices were counted, the school district would allocate funds. Parents would not receive any government aid directly.

But changing social programs from above rarely works. In the late 1960s and early 1970s, for example, the federal government and the Ford Foundation attempted, and largely failed, to implement tenant management of public housing nationally. Because most tenants weren't ready to accept change and resented outsiders telling them what to do, most of the original tenant-management corporations failed. Only when tenants organized and demanded reform did resident management of public housing begin to succeed.

I doubt the authors' reforms, should they be implemented, would be permanent. Most parents would be unenthusiastic about joining a choice plan they had no say in creating. Most polls that show parental support of choice find that parents favor vouchers, which enable them to choose freely between public and private schools. Under the authors' plan, parents could choose private schools only by paying tuition. Indeed, Chubb and Moe would encourage private schools to be nationalized as a precondition of accepting state aid, thus ensuring that few, if any, truly private schools would remain.

Politics, Markets, and America's Schools is an important book that will be read—and debated—for decades to come. But the reforms the authors propose are only partial answers to the problems of American schools.

Washington Editor Martin Morse Wooster is working on a book about reforming public high schools.

Late Departure

BY CLINT BOLICK

In Defense of American Liberties, by Samuel Walker
New York, Oxford University Press, 479 pages, $24.95

There they were: Presidential candidate George Bush was trashing the American Civil Liberties Union in an attempt to tar opponent Michael Dukakis as soft on crime and pornography, while at the same time in Wayne, Michigan, the ACLU was defending a woman's right to post a Bush sign on her front lawn.

The episode was classic ACLU: championing civil liberties even to the extent of defending its own enemies. This commitment to principles above all else is the secret of the ACLU's remarkable success in shaping 20th-century American jurisprudence. The ACLU's noble lineage is the subject of Samuel Walker's *In Defense of American Liberties*. Walker presents an extensive, well-researched chronology covering the organization's 70 years. "The story of the American Civil Liberties Union," he declares, "is the story of America in this century."

Walker is not a dispassionate observer, and he says so at the outset. The former president of Nebraska's ACLU chapter and a member of the national organization's board of directors since 1983, Walker admits that he is "deeply committed to [the] organization." Beyond this "truth in labeling," Walker asserts that "I have not shied away from covering in detail the less attractive episodes in ACLU history."

In one sense this is true. Walker's book is replete with discussions about internal ACLU turmoil, highlighting both internal and external pressures to abandon or compromise principles. Walker concedes these pressures sometimes proved effective.

But overall, the book is a puff piece for the ACLU, overlooking or downplaying the organization's recent departures from its traditional principles. For in the past

two decades, the ACLU has slowly but steadily transformed itself from an organization devoted to civil liberties into an increasingly reliable and militant voice in the chorus of left-wing special-interest groups.

Walker hints at this transformation, but he attempts to rationalize it. "The ACLU is an ongoing experiment, with an agenda that constantly changes," he observes. But is it the agenda that changes, or the principles themselves? "We define what civil liberties are," Walker quotes one ACLU official as saying. Yet Walker ignores the ACLU's shift from an organization that tailors its agenda to its principles to one that modifies its principles to fit its agenda.

Walker quotes *The Encyclopedia of the Constitution*'s definition of *civil liberties* as "those rights that individual citizens may assert against their government," adding that in the Unites States these are embodied in the Bill of Rights. "The essential feature of the ACLU," he argues, is the organization's "professed commitment to the nonpartisan defense of the Bill of Rights." It is "precisely this absolutist approach," Walker emphasizes, "that arouses the hatred of its opponents, causes despair among many would-be friends, and inspires its members."

This absolutist commitment to individual liberties has led the ACLU consistently to champion the rights of people outside the mainstream. "Defense of the unpopular," Walker explains, "has always been the ACLU's touchstone, its proudest principle, and the cause of the most bitter attacks on it."

The ACLU grew out of the pacifist movement during World War I. Its predecessor, the Civil Liberties Bureau, had 12 of its pamphlets banned as subversive in 1917 by the United States Postal Service. One of the pamphlets, *War's Heretics*, by Norman Thomas, argued for an inviolable zone of individual conscience, a concept to which the ACLU would later commit itself.

In 1919, the U.S. Supreme Court made clear that it would not protect such liberty against government abuse. In a trilogy of opinions, the Court sustained convictions based on various forms of antiwar speech. But in one of the cases, *Abrams* v. *United States*, Justices Oliver Wendell Holmes and Louis Brandeis articulated in a dissenting opinion the free-speech principles that provided the foundation for contemporary First Amendment jurisprudence.

Ten days following the 1920 Palmer raids, in which communists were rounded up for deportation, the ACLU was founded by Roger Baldwin and feminist leader Crystal Eastman. Supporters included both social activists and conservatives who supported the Bill of Rights. At first, since the courts were hostile, the group focused on educating the public, but before long it embarked on a litigation crusade that evolved into the ACLU's principal strategy.

In the past two decades the ACLU has transformed itself from an organization devoted to civil liberties into a reliable voice in the chorus of left-wing special-interest groups. It has moved beyond—and in some instances away from—its original objectives.

Early on, the ACLU faced a crucial crossroads: whether to fight Boston mayor James Curley's ban on Ku Klux Klan meetings. Though its decision antagonized its allies in the NAACP, the ACLU challenged the ban, choosing a principled route that quickly became the organization's hallmark.

By 1925, the ACLU had achieved its first major victories. Its involvement in the *Scopes* trial, defending the teaching of evolution, attracted public attention to the organization and shifted sympathies in favor of civil liberties. That same year, the Supreme Court ruled that the Bill of Rights, whose scope previously was restricted to the federal government, was applicable to the states under the 14th Amendment. This provided the ammunition necessary for the ACLU to fight its war on behalf of civil liberties.

With the election of Franklin Roosevelt in 1932, the ACLU soon found more friends in both the executive and judicial branches. But some in the ACLU feared the growth of government power under the New Deal. In 1937, the ACLU split over whether to defend employers' rights against union organizers. Though it came down on the side of Henry Ford's freedom of speech, it declined to challenge worker sit-down strikes in automobile factories. Declaring that the ACLU "is not organized to protect the rights of property," the group made perhaps its earliest decision to pick and choose among liberties.

The ACLU often aligned itself with communists, even joining the "Popular Front" in the early 1930s. But as anticommunist passions increased during the decade, the ACLU moved away from the communists, finally adopting in 1940 a policy barring from official positions anyone who supported totalitarian movements. Walker pronounces this episode "the one great deviation from principle in history"—a conclusion that is far short of the mark.

The ACLU was the only major organization to defend Japanese-Americans who were incarcerated in internment camps during World War II, but even in that case the group compromised its principles. With a number of ACLU officials backing Roosevelt, the organization challenged the internment orders not as inherently unconstitutional, but merely on procedural grounds. In this way, the ACLU implicitly sanctioned the power of government to suspend civil liberties during wartime. Walker describes the internal debates in detail but draws no conclusions about the ACLU's ultimate compromise.

As the judiciary grew increasingly liberal, the ACLU pursued a more ambitious litigation strategy. In the 1950s it fought loyalty oaths and sided with the

NAACP against racial segregation. The organization's golden decade, from 1954 to 1964, witnessed a remarkable series of triumphs in the areas of free speech, civil rights, and due-process rights for criminal defendants. It later successfully advocated a constitutional right to privacy, which led to the Court's decision protecting the right to abortions. As Walker accurately concludes, the "ACLU can claim much of the credit...for the growth of modern constitutional law."

But during the past two decades, the organization has moved beyond—and in some instances, away from—its original objectives. The turning point appears to be 1977, when the ACLU endorsed the concept of racial quotas in Alan Bakke's lawsuit against the University of California. It also established a 50-percent quota for women and 20-percent minority quota for its own paid staff and board positions, for the first time making factors other than devotion to civil liberties primary in determining who would run the organization.

At the same time, the ACLU has pursued a social agenda that places it at odds with such liberties as freedom of contract, freedom of association, and sometimes even freedom of speech. The Southern California ACLU has endorsed every person's right to a "safe, meaningful, and socially useful job that pays a fair living wage," and in 1988 the national organization recognized the government's "affirmative obligation" to provide housing.

Walker ignores the ACLU's recent outright departures from principle, most notably its support for the federal "Fairness Doctrine," which dictates speech requirements for broadcast television. Likewise, Walker does not mention the ACLU's efforts to compel owners of private property—particularly shopping malls—to allow people to engage in speech-related activities on their property. And while Walker notes that the ACLU has opposed codes on university campuses that ban "offensive speech," some ACLU chapters are actively backing such efforts to suppress speech. (See "The First Shall Be Last?," Oct.)

In each of these cases, the ACLU has abandoned its commitment to protect individuals against abuses of government power, seeking instead to use government power to achieve its own social agenda. This shift, which Walker largely ignores except to say that it reflects "a tentative step into uncharted and controversial waters," is a crucial one, for it places the ACLU for the first time in a rigid ideological camp.

Walker notes that the ACLU traditionally has been composed mainly of liberals. But what "distinguishes ACLU members from mainstream liberals," he contends, "is their skepticism of government power and a willingness to challenge extensions of that power justified in the name of social betterment." Where once that was consistently true, today it is not. The ACLU is no longer a haven for champions of civil liberty.

Walker's book is a useful history of most of the seminal events in the ACLU's history. But he overlooks the organization's metamorphosis from a group that always supports individual liberty into one that frequently subverts it. As a result, *In Defense of American Liberties* induces a nostalgia for the good old days when liberty was liberty and the ACLU was there to defend it, but it fails to recognize that the ACLU no longer always serves that vital function. The second half of that story remains to be written.

Clint Bolick is director of the Landmark Legal Foundation Center for Civil Rights.

Oú Est le Boeuf?

BY MICHAEL SCHRAGE

America's Struggle for Leadership in Technology, by Jean-Claude Derian Cambridge, Mass.: MIT Press, 309 pages, $25.00

Jean-Claude Derian, who served as chief science counselor at the French Embassy in Washington from 1984 to 1987, is quick to say that he is not the Tocqueville of high technology. Alas, this is not false modesty. Perhaps it is the curse of French commentators on American culture that they be held to Tocquevillian standards. But then, I'm sure the French intellegentsia—of which Derian is a card-carrying member—wouldn't have it any other way.

America's Struggle for Leadership in Technology offers a distinctly French perspective on the debate surrounding industrial policy and technological superiority. As one might expect, Derian offers what can best be described as a "mixed-market" lens through which to view America's multiple innovation infrastructures. He's most comfortable discussing the intersection of government policy and industry, least comfortable when trying to examine the alchemies of the innovation process. He represents a useful point of view for interested Americans to consider, but I doubt he will change anyone's mind in Washington, on Route 128, or in Silicon Valley. Derian might have been better off if he came from Tokyo rather than Paris.

In keeping with the tradition of Diderot, Descartes, and other French scientist/philosopher types, Derian's chief analytical tool is categorization: a place for everything and everything in its place—even if it's a tight squeeze. His thesis is based on a fairly simple idea: that there are essentially two cultures of high technology. One culture is "sheltered"—protected either by geography, national security (Hughes, TRW, General Dynamics), or monopoly (the Bell System). The other is "exposed"—in other words, market-driven, like Silicon Valley, Route 128, and, yes, Japan's *keiretsu*, industrial pseudo-conglomerates like Mitsui.

Sheltered companies have semi-captive customers; exposed companies are subject to the whims and vagaries of their customers. America, says Derian, is struggling to strike a new balance between these two disparate cultures as it endeavors to compete with the Japanese and the Europeans in an increasingly global high-tech marketplace.

Though this book has its moments, it does a far better job of being informative than being compelling. Unlike Tocqueville's, Derian's analysis lacks soul, and his insights lack wit. (On the other hand, you can't help wondering if Derian was displaying extremely subtle Gallic humor when he made his "Made in USA" chapter on the revival of American industry chapter 11.) A book by a Frenchman grappling with issues of American culture and technology needs esprit and élan to capture the reader, not the desiccated recitation of high-tech market-share statistics.

An American reader wants the French perspective to be brimming with provocative assessments and unusual angles, providing a sense of the differences between what technology means to Europe and what it means to the United States. Although he clearly has a firm technical grasp and a broad vision, Derian doesn't deliver. What we have here is merely an elegant outline filled with relevant data.

For anyone who even casually follows high technology in the *Wall Street Journal*, *Business Week*, or any one of a dozen trade publications, Derian's comments can hardly come as news. The issues of "competitiveness" and that Bush administration bugaboo, "industrial policy," revolve around the kind of balance that should be struck between pure market forces and government involvement. We don't need a Frenchman to tell us this dichotomy exists; we need a Frenchman to tell us what this dichotomy means and what we can do about it. Derian would rather be a diagnostician than a healer.

Unfortunately, Derian's discussion of America's two cultures of high-tech capitalism is marred by typos and inaccuracies—Genentech is not "Genetech" and the CEO of Lotus is Jim Manzi, not "Lanzi." (For a prestige university press like MIT to permit errors like these to appear under its imprimatur says more about the American concept of quality control than a dozen books on U.S. competitiveness.) More important, this book is marred by an unrigorous approach to these techno-cultures.

While Derian relentlessly cites newspaper articles and book passages, he appears to have conducted only a handful of interviews with real, live people. Tocqueville should be spinning in his grave if this is how the French elite gets its insights into American culture. To appreciate the dynamism of Silicon Valley or Route 128, you have to be there.

While Derian cites newspaper articles and book passages, he appears to have interviewed only a handful of real, live people. Tocqueville must be spinning in his grave.

Entrepreneur may be a French word, but it has been thoroughly Americanized as a high-tech phenomenon. Derian utterly fails to give us the French perspective on what makes American entrepreneurialism tick. Instead, he quotes American sociologists. Some of my best friends are American sociologists, but I wouldn't give them the last word on Silicon Valley culture. The only way to get a sense of a culture is to get a sense of the people.

No American with an ounce of brains would claim special insight into French culture on a diet of Crozier, Foucault, Sartre, and *Le Monde* without at least having spent time with the French in France. Similarly, no matter how many newspapers and magazines you read about Silicon Valley and Route 128, you just won't get it until you go there, drive around, and go into the companies themselves. It's not enough to analyze; you've got to feel and use your feelings to temper that analysis.

Derian would rather show a chart indicating degrees of market "exposure" than write a passage that illuminates what makes an American software entrepreneur possible and a French one unlikely. I fully appreciate that this was originally a book for the French, but I consider it a wasted opportunity that Derian did not give of himself in pointing out what makes an American engineer an entrepreneur while a French engineer stays at Thomson CSF or Matra.

Perhaps because he is a French technocrat, Derian is on surer ground—albeit looking in the wrong direction—when he writes on government policy. He rightly points out that the U.S. government has played a critical role in the development of key technologies such as computers and biotechnology. However, he doesn't quite appreciate that the federal government here doesn't exert quite the same influence as in, say, France. Derian argues that the Strategic Defense Initiative played a vital role in shaping America's high-tech base. In fact, as even its supporters will concede, it did not. SDI was just that—a defense initiative that had questionable value in terms of commercial spinoffs and the industrial base.

Similarly, when Derian states that the Pentagon is America's MITI, he demonstrates that he has a better grasp of inside-the-Beltway ideology than marketplace realities. Indeed, for the past five years or so, Washington policy intellectuals have been complaining that the Pentagon doesn't do enough to encourage investment in America's high-tech base. When the director of the Defense Advanced Research Projects Agency—the Pentagon's high-tech venture capital unit—tried to boost Defense Department involvement in private development efforts, he got sacked.

Derian does a fine job of comparing the nature of European and American sheltered industries—notably the airline industry, where he looks at Airbus versus Boeing. He also writes with authority about how Europe is beginning to make the adjustment from sheltered to exposed in its own high-tech industries. His commentary on Japan, however, offers nothing new. I'm skeptical of his claim that Japan's high-tech industries are more

"exposed" than "sheltered." Today, sure—but 10 years ago?

The fact is, as Derian acknowledges, that government guidance played a significant role in the evolution of Japan's high-tech base, just as it did in the evolution of America's. Japan's *keiretsu* system provides both a cultural and financial subsidy for innovation. The *keiretsu* is a guaranteed buyer of innovation, significantly reducing risks and costs. That's one of the problems with categories: It can be tough to make things fit neatly.

Former IBM Chief Scientist Lew Branscomb's introduction to the book gives you 70 percent of what you need to know about Derian's dichotomies in a fraction of the time. The tragedy here is that Derian's arbitrary categories created a Procustean bed for his insights and personality. Indeed, I defy anyone who reads this book to tell me anything substantial about Derian. Tocqueville gave America a unique and powerful journal of its cultural life and times. He could only do that by giving of himself as an observer. Derian was in a position to do much the same for America's cultures of high technology. He didn't. Too bad.

Michael Schrage writes the "Innovation" column for the Los Angeles Times.

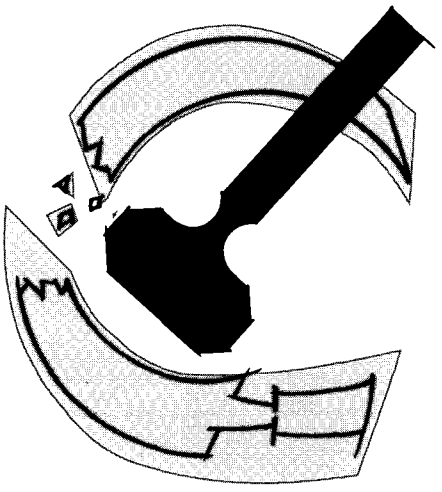
Revenge of the Skeptics

BY JUDY SHELTON

The Impoverished Superpower: Perestroika and the Soviet Military Burden, edited by Henry S. Rowen and Charles Wolf, Jr., San Francisco: ICS Press, 350 pages, $22.95

In March 1988, a conference at the Hoover Institution brought together a group of maverick analysts who had reached a common conclusion: The economy of the Soviet Union was much smaller than Central Intelligence Agency statistics indicated.

The Impoverished Superpower: Perestroika and the Soviet Military Burden, edited by Henry S. Rowen and Charles Wolf, Jr., is a collection of the papers presented at that conference more than two years ago. The book stands as a tribute to Rowen, now assistant secretary of defense, and Wolf, dean of the graduate school and director of international economic studies at the Rand Corp. For years, these two scholars have diligently pointed out that a country with a GNP only about a third as large as that of the United States could not continue to invest its resources so heavily in the military sector without bankrupting the entire economy.



At this point everyone—Mikhail Gorbachev in particular—knows Rowen and Wolf were right. The Soviet Union is unraveling before our eyes as monetary dysfunction and consumer shortages serve to fan the fires of social protest. The country is no longer economically viable; can political upheaval be far behind?

All of this seemed much more remote in early 1988, when people such as Swedish economist Anders Aslund were suggesting that the growth rate of the Soviet economy was stagnant during the first half of the 1980s or possibly even negative. (CIA estimates pegged average Soviet GNP growth at 1.9 percent a year from 1981 to 1985). Aslund writes the lead article for the book and sets forth the fundamental question: "How Small Is Soviet National Income?" Aslund cites the impact of hidden inflation and wholly unreliable Soviet statistics and warns about their distorting effects on Western attempts to calculate Soviet productivity. "A complete reassessment of Western estimates of Soviet economic aggregates is urgently needed," he asserts.

Echoing Aslund's concerns, Richard E. Ericson of Columbia University invokes the work of two Soviet economists, Grigorii Khanin and Vasilii Seliunin, to make the argument that the purported achievements of past decades of Soviet rule may have been vastly overstated through the use of "cunning figures" having little relationship to economic reality. Ericson's analysis of Khanin and Seliunin's work is objective and scholarly; he does not automatically embrace their methods or conclusions. Ericson does, however, point out that if these Soviet economists are correct in their assessment of their country's economic performance over the last 20 years, the implications are staggering:

"Given the [Khanin and Seliunin] indexes implying that Soviet GNP is only about one-half to two-thirds what the CIA believes, the direct Soviet defense burden must be somewhere between 25 and 30 percent of GNP. Thus the military places a greater burden on the development of the economic system than is generally believed in the West, further aggravating the now widely acknowledged economic slowdown."

The decrepit state of the Soviet economy, the radical reforms Gorbachev has undertaken, the dismal prospects for *perestroika*—it all makes eminent sense when we begin to fully comprehend the enormity of the burden Soviet military spending has placed on that country's dwindling capacities.

David F. Epstein enlarges the concept of Soviet military spending in his paper to include activities that impose extra costs on the Soviet economy but are not included in CIA defense estimates. Specifically, he looks at dual-use goods that accommodate civilian needs but are designed to meet military demands. He notes, for example, that Soviet dry-cargo ships are roll-on, roll-off ships, which means that they are military craft first.

Soviet airliners are likewise outfitted for use as military transport planes. "Thus we should, in principle," Epstein states, "try to attribute to the military not only the additional costs of militarily useful designs, but the costs of providing peacetime services and the costs of building a wartime reserve in excess of civilian needs."

Encapsulating the essence of the Soviet economic condition, Christopher M. Davis offers his own assessment in an article titled, "The High-Priority Military Sector in a Shortage Economy." Davis declares at the outset that Kremlin planners persisted in their efforts to increase Soviet military power despite declining growth rates of national income and productivity, shortages of goods and services, and recurring poor harvests. Davis verifies the priority given to the military sector in the allocation of scarce internal Soviet resources. At the same time, he notes that the traditional protection given to military needs is no longer a sufficient shield against production disruptions and shortages of inputs.

In the meantime, what has happened to the Soviet infrastructure? It's clear now that military spending was eating up what little was available to take care of the needs of Soviet consumers over the last two decades; what about spending for capital investment? Boris Z. Rumer of the Harvard University Russian Research Center explains in his contribution that Gorbachev's original plans for improving the infrastructure of the Soviet Union have all come to naught. Gorbachev, like most of his predecessors, started out quite enamored with the idea of investing heavily to modernize factories, upgrade production capabilities, and improve the quality of Soviet manufactured goods. But, according to Rumer:

"The Soviet Union's attempt to launch a great investment surge has miscarried because there is too much inertia in the investment sphere and too little prior preparation of the economy as a whole to allow such a violation of the investment rhythm. Ill-advised tampering with that system is fraught with serious consequences, including chaos in the investment sphere of the economy."

Chaos is a word increasingly used when speaking about the Soviet Union. Even the CIA, which for so long has had a tendency to sugarcoat Soviet economic statistics, has finally acknowledged that things are not going well over there. In a recent appearance before the Joint Economic Committee, the CIA, in conjunction with the Defense Intelligence Agency, offered a report entitled, "The Soviet Economy Stumbles Badly in 1989." The two intelligence agencies stipulate in the report that the Soviet economy is in an unstable state and that "a single major event could lead to a substantial drop in output and bring about chaos in the distribution of both producer and consumer goods."

Perhaps the early renegades of Soviet economic research will take some satisfaction in the realization that the CIA has come around to their way of thinking. Igor Birman, a Soviet emigré who started sounding the alarm about Soviet internal budgetary and economic problems nearly a decade before most everyone else, has had his work publicly vindicated.

But no one takes real joy in seeing the Soviet economy and the welfare of the Soviet people collapse into terminal misery. There seems no way out for Gorbachev at this point; history will decide the fate of Russia's long encounter with communism. We can only wonder, though, how the West might have behaved differently in the intervening years if our leaders had acted on the knowledge brought to light by this group of independent-minded economists: that Moscow was betting all its worth on being the world's most powerful and intimidating military power—and destroying itself in the process.

Judy Shelton is a research fellow at the Hoover Institution and author of The Coming Soviet Crash.

The New Kids on the Dock

BY STEPHEN MOORE

Friends or Strangers: The Impact of Immigrants on the U.S. Economy
By George J. Borjas, New York: Basic Books, 274 pages, $22.95

Two hundred years ago Benjamin Franklin cursed the newly arriving German immigrants as "generally the most stupid of their own nation." This attitude was nothing unusual. Although America has always prided itself on its rich immigrant heritage, Americans have persistently held unfavorable opinions of new arrivals.

Hence, the Italians and Irish were spurned in the late 1800s, as were the Chinese and Japanese at the turn of the century, the European Jews between the two world wars, and the Cubans in the 1950s and '60s. With 20/20 hindsight, we now know that the public's intolerant attitudes toward each of these immigrant waves were unfounded; each group has made positive contributions and has readily integrated itself into the American social fabric.

This history should make us suspicious of those who argue today that the Mexicans, Vietnamese, Koreans, and other "new immigrants" are qualitatively less desirable than those who came before. Yet George J. Borjas, an economist at the University of California, Santa Barbara, has written a new book, *Friends or Strangers: The Impact of Immigrants on the U.S. Economy*, that makes precisely this point. His thesis can be summarized in nine words: "The new immigrant is less skilled than the old."

Borjas provides a blizzard of statistics to validate his claim. Relying extensively on Census Bureau data on the foreign born from 1940 to 1980, he compares the economic performance of each post-World War II immigrant wave to that of U.S.-born citizens. He documents a "troubling" decline in schooling, labor-force participation, annual hours of work, and earnings, and a rise in the poverty and unemployment rates of each successive immigrant cohort.

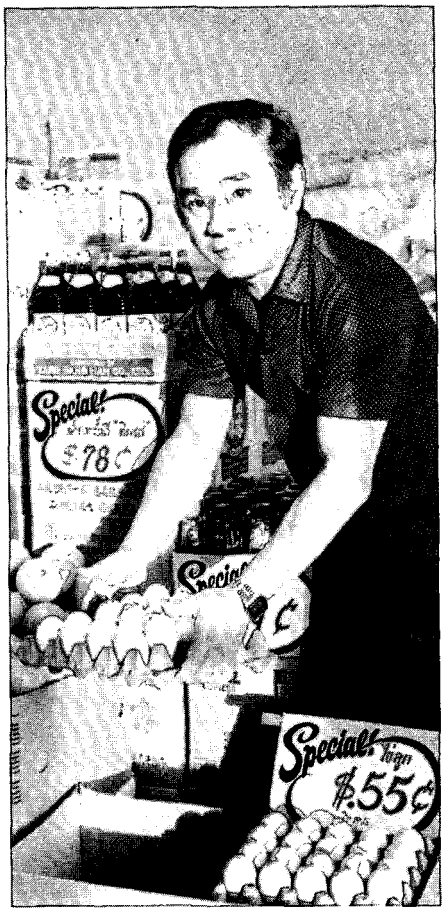
For example, in 1940 newly arrived immigrants had earnings that were 13 percent higher than those of natives; by 1960 the newly arrived immigrants' earnings were 8 percent lower than those of natives; in 1970 they were 10 percent lower; and by 1980 they were 17 percent lower. On average, the new immigrant will earn $5,000 a year less (in 1988 dollars) than the old immigrant did for each year of his or her working life.

What accounts for this decline in the quality of America's immigrants? Borjas argues that two factors are responsible. First, the 1965 Immigration Act made family reunification the cornerstone of U.S. immigration law. This presumably lowered the skill level of newly arriving immigrants. Today, some 90 percent of all immigrants to the United States come through family connections.

The more important factor responsible for the decline, according to Borjas, is that the 1965 act shifted the national origin of America's immigrant stream from Europe to Asia. He maintains that the Europeans tended to be highly skilled and educated and have a strong knowledge of English when they came—all factors important in predicting economic success in the United States. His data confirm that European immigrants in the United States are doing much better than Asians and Central Americans.

On this last point, Borjas is less than fully convincing. European immigrants appear to do much better than other ethnic groups because of an artifact in the data: The typical European immigrant has been in the United States considerably longer than the typical Asian or Mexican. On average, the European should have higher earnings because every immigrant group's incomes rise dramatically over time.

Should we be especially concerned about the economic adaptation of the Asians and Mexicans? Borjas says yes. Most other studies, however, including those by the Urban Institute and the Rand Corp. of the Asian and Mexican communities in California, find that these immigrant groups are assimilating socially and economically in much the same manner as earlier immigrant groups. The Rand study calls the recent Vietnamese immigrants—many of whom came after the 1980 census, the last snapshot of immigrants investigated by Borjas—"one of the most skilled immigrant groups ever to come here."



Borjas worries that Asian and Latino immigrants lack the skills to assimilate; most other studies conclude the opposite.

Nevertheless, Borjas's main conclusion, that the United States is turning away the most-skilled immigrants—thus diverting many of the most talented people to Canada and Australia—should be of concern to policymakers. While immigration through family connections is now relatively easy, only about 5 percent of the visas, or about 50,000 per year, are reserved for skill-based and employer-sponsored immigration. U.S. businesses must often wait up to three years—and spend thousands of dollars in legal fees—to bring technically trained, foreign-born workers here. Today, the top mathematician in the Soviet Union wishes to immigrate to the United States, but he cannot get a work visa; he will go to France. America is turning away the Einsteins.

Borjas's policy prescription is the economist's dream and the politician's nightmare: auction off immigrant visas to the highest bidder. This has been proposed by other eminent economists as well, including Gary Becker and Julian Simon. The argument is that if we must use some method of rationing visas, the most efficient and the fairest approach is to use the market to allocate these visas to those who accrue the highest economic return from purchasing them. The idea is intellectually intriguing but politically a nonstarter.

Borjas also endorses a point system—under which immigrants are awarded merit points based on their personal characteristics, such as age, education, and occupation—to determine eligibility for visas. Similar policies have been successfully adopted by Australia and Canada. These countries have not experienced a decline in immigrant skill levels to the extent that the United States has.

One point about *Friends or Strangers* warrants emphasis. In no place does Borjas argue that the new immigrants are economically harmful to the United States. In fact, he argues emphatically that "the methodological arsenal of modern econometrics cannot detect a single shred of evidence that immigrants have a sizeable adverse impact on the earnings and employment opportunities of natives in the U.S."

All of his data lead *not* to the conclusion that unskilled immigration is undesirable, as some have mischaracterized his findings, but rather that skilled immigration is more beneficial than unskilled immigration. This suggests that America's immigration laws should be reformed by opening the gates to more Einsteins, not by shutting them to the huddled masses.

Stephen Moore is director of the American Immigration Institute and an adjunct fellow with the Indianapolis-based Hudson Institute.

ULLI STELTZER

ULLI STELTZER, FROM *THE NEW AMERICANS*, NEW SAGE PRESS, PASADENA, CALIF.

REAGAN'S AMERICA

THOMAS W. HAZLETT

In 1985, my friend Larry was enjoying a cocktail in a working-class New Jersey pub when he overheard one aged leftist say to another how depressed he was about Ronald Reagan, the fascist pig. A huge reelection mandate, a booming economy, no war—and right-wing politics. But his comrade was of a different mind. "We're headed for a huge depression," he augured, "that'll make the 1930s look like a picnic. There's gonna be mass unemployment, food's gonna be gone, people will *starve*. It's all going to collapse. Just mark my words." To which his associate could only shake his head and mutter, "I just don't think I can be as optimistic as you are, pal."

OK, so Reagan's Depression never arrived. We've got Homelessness. Poverty. AIDS. Poor-get-poorer while rich-get-richer. Runaway racism on campus. And it's all due—every last drop—to the unreconstructed attitudes of Reagan's men.

So the U.S. economy kicked butt in the '80s. But the little guy got flattened. You don't want to be caught dead in Reagan's America if you happen to be a poor/black/female/Hispanic/handicapped type o' guy. These are the downtrodden, the carcasses upon which rich Republican yups and yupettes step: the meek, the weak, the exploited, the Democratic-leaning. The rich—trickling down on God's children!

The case is made scientifically, you see, with *the numbers*. If you haven't seen them in the op-eds, on the news (Reagan Ruined Lives of the Poor—Film at 11), your doctor can legally pull the plug on you. But the 1990 *Statistical Abstract of the United States* contains lots of numbers which fail to make "Donahue."

So how about *these*? *Jobs:* The unemployment rate after four years of Carter was 7.1 percent and climbing. After eight years of Reagan it was 5.5 percent and falling. *Income:* Real per-capita disposable income grew 4 percent from 1977 to 1981, but 16 percent from 1981 to '88, despite the fact that Carter inherited the uptick of a business cycle and bequeathed a southbound express.

You're not surprised. You know that affluent white boys are grabbing mega-salaries while the masses are flipping cheeseburgers, throwing the numbers—not to mention the poor—out of whack. Well, then, let's look at *Black American Income:* Real median household income fell by 10.5 percent 1977-1981; it grew by 11.5 percent 1981-88. Moreover, the percentage of black families making above $50,000 annually (in constant, 1988 dollars) also fell under Carter—from 6.6 percent to 5.6 percent, before dramatically rebounding to 9.9 percent under Reagan. This 77-percent gain was more than double the proportional increase in white family incomes. (A similar pattern—in the tank with Carter, on the rebound with Reagan—is seen in Hispanic incomes.)

And greed, you say? Well, the '80s were a *Get Mo'* time for some, including America's *charities*. Private foundation grants rose 68 percent in real terms in the eight years of Reagan's America, and those specifically for welfare programs rose 86 percent. All told, private charitable contributions rose from $48.7 billion in 1980 to $104.4 billion in 1988, an inflation-adjusted leap of 49 percent.

Quality of life? Boy, this gets complicated here. Let's make the wild assumption that people prefer to live where, oh, let's see—the *murder rate*, that's it—is low. Reagan's America must have done *horribly* there, with all those poverty-stricken homeless families living on the streets, and what with the rejuvenation of racial tension all due to that bigotry thing in the White House, and—oops, looky here: The murder victim rate *fell* by 13.4 percent under Reagan. And it fell by 20 percent for black males; if the homicide rate for 1980 (in Jimmy Carter's America) had prevailed in 1987 (Reagan's Racist Revival), 1,876 more black American men would have been murdered in that year alone.

Reagan didn't do all this, you say? But I thought he was some kind of a socioeconomic superman, picking up far-flung global trends and twisting them to his very will. He certainly took from the rich to give to the poor—we've got proof in the income distribution numbers. But that would be a really mean trick for Ronald Reagan—because the trend toward greater skewedness in income started in the early-1970s, and not just in the U.S. but in all the other advanced economies. (Reagan must have been an incredibly powerful governor of California.) All serious commentators (which includes Robert Reich and Mickey Kaus in *The New Republic* and excludes Kevin Phillips—in bookstores near you) concede that the problem predates Reagan's presidency.

So there are other factors, you say? Things like demographic trends, and autonomous world-market changes in the petroleum price, and wars in the Middle East, and Japanese competitiveness, and the 486 chip, and old court decisions deinstitutionalizing crazy people, which turn out to be hugely important in our social and political lives. And you'll now admit that maybe that homeless person in the park is no more Reagan's personal responsibility than are the 1,876 black men whose lives were spared in 1988.

Well, now, that's quite a deviation. Tantamount to an abdication. And that's very close to a violation of your fiduciary responsibility to pursue the logical course of your political contentions, an attitude smacking of the devil-may-care flight from personal integrity in the Boesky/Bork/Meese/North era of Ronald Reagan. And I, for one, am holding both Ron and Nancy personally liable.

Contributing Editor Thomas W. Hazlett teaches economics and public policy at the University of California, Davis.

Scripts by George H. Smith, Wendy McElroy & Jeffrey Hummell.

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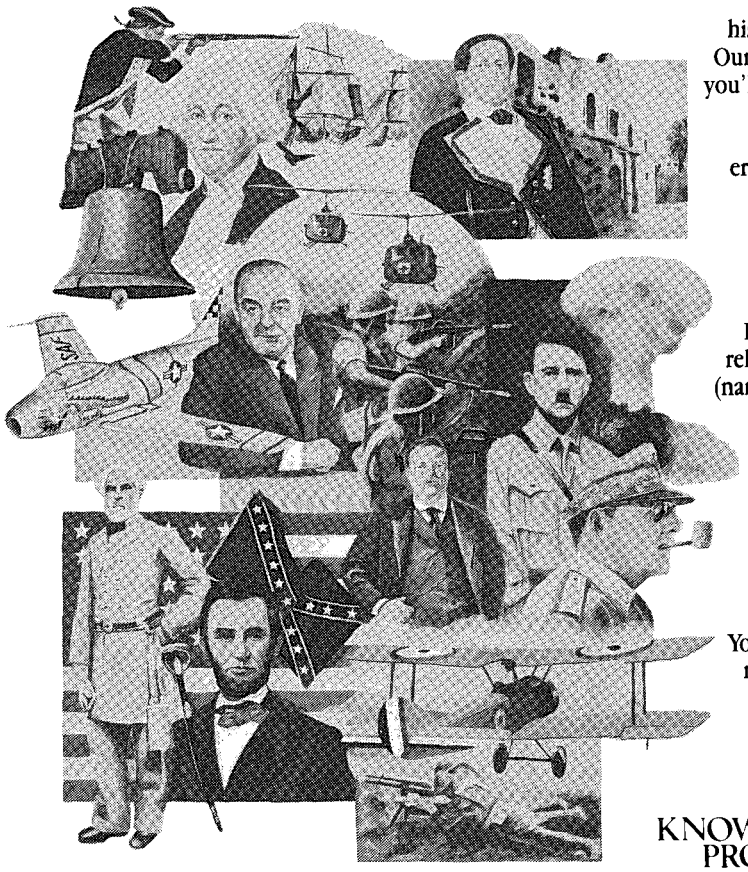

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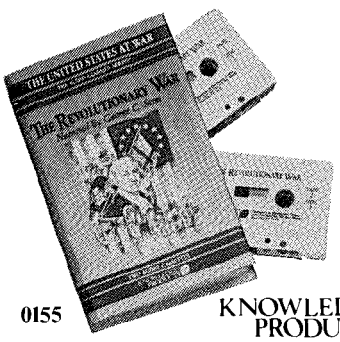

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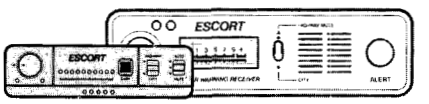

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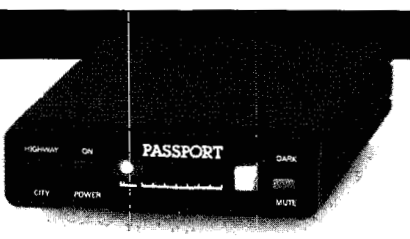

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